TRADE REFORM LEGISLATION

HEARINGS

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

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TRADE REFORM LEGISLATION

FRIDAY, APRIL 11, 1986

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:30 a.m., in room 1100, Longworth House Office Building, Hon. Ed Jenkins presiding.

Mr. JENKINS. We are delighted to have testifying before us this morning two of our colleagues. If the two of you would take your places together there, we would be delighted to hear from you. We appreciate your interest in this.

I think you have a little bit of a different viewpoint on one particular part of this, and I am delighted on behalf of the subcommittee to take your testimony. Your entire statement, as you know, will be a part of the record. You may summarize, Bob, or if you want to start as you desire?

STATEMENT OF HON. ROBERT W. KASTENMEIER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. KASTENMEIER. Thank you very much, Mr. Chairman.

I appreciate the opportunity to appear before you and your committee this morning on the subject of intellectual property and trade.

I might say that there are, as you are well aware, a number of approaches to the problem, and we do face deadlines within the next few weeks, I know your committee does, of responding to this question. There are also a number of initiatives, or a number of drafts, including my own bill—which is a new bill in the works, H.R. 4539 introduced about 2 days ago.

Let me briefly say about intellectual property that we know that increasingly, the private sector, government officials and politicians, have fixated on worldwide protection of American intellectual property as one of the keystones to addressing the trade problem. Without question, the American creative genius has been nurtured by a strong tradition of protecting the property rights of intellectual property owners.

As we think about adjusting our lives and laws, to meet the trade problem, I hope we can proceed in a balanced and objective way. Important as this task is, we should not, in my view, take precipitous action for what may otherwise be a short-term problem.

I proceed in the notion that our intellectual property laws are themselves a sort of balance, a bargain, as the Constitution sets out that the public receives access to the creation or invention, and

then, of course, eventually the invention is added to the public domain. The Federal laws and—which are rather explicit in this—in no way, I think represent that this is some sort of natural right of creators or inventors.

We literally have provided for that through our laws. Therefore, when we change these laws, I think we must keep in mind that there ought to be some balancing of a public interest and not merely what happens to be in the short run, a private or proprietary interest.

In this respect, I would urge some caution or balancing with respect to using international trade as a vehicle to changing the laws relating to intellectual property.

Therefore, I have proposed a bill which essentially is more modest than some of the other proposals.

With respect to modification of section 337, there are three things that I would advise. I would not, for example, really delete the domestic industry requirement. Rather, I would redefine what interests may have access to the ITC in terms of a substantial investment in facilities relating to the exploitation of certain intellectual property rights, including research and development licensing, sales and marketing in the United States. I would use criteria of that sort, rather than throw out the domestic industry requirements entirely.

As to whether or not intellectual property infringement is of itself necessarily deemed to be injurious—and injury, of course, is a very considerable question—I would not go that far, because in part, the tribunal we are talking about, the ITC, is not the same as a U.S. court. Therefore, the injury question still ought to be as a trade element, within that tribunal, and perhaps not in the Federal courts. We can achieve a balancing in terms of what is sought by creating a rebuttable presumption that these acts are injurious.

In other words, if there is an infringement of patent alleged, the complainant need not show that he or his company is injured, but that the respondents in that case could show that the complainant, in fact, suffered no injury, in which case we would have met a rebuttable presumption, and the complainant would fail.

Also my bill would, in fact, provide a number of provisions for the ITC relating to consent orders, considering public interest factors, standard of review, time limits and so forth.

There are five major provisions. I won't burden your proceeding, Mr. Chairman, by discussing each of them. But to say that procedurally, I think the ITC would benefit from a number of changes which would upgrade its efficacy in dealing with what we consider to be a growing responsibility in and probably growing access by a number of complainants one form or another.

I would like to suggest that, while there is a difference, we should not presume that the ITC is a "Federal free court." It is not. We should, I think, be careful in trying to radically change its role with respect to intellectual property.

I know that this is somewhat different than some of the other proposals. It is not as far-reaching. While my friend Carlos Moorhead and myself generally agree on many things in this area, I am sure that his position is somewhat different, and I am sure you will benefit as well from hearing from my colleague.

I thank you, Mr. Chairman.
Mr. JENKINS. Thank you, Mr. Kastenmeier.
[The prepared statement follows:]

Testimony of Robert W. Kastenmeier
Chairman, Subcommittee on
Courts, Civil Liberties and
the Administration

INTELLECTUAL PROPERTY AND TRADE

It is now commonly accepted that the United States should take steps to address our serious trade problems. Increasingly the private sector, government officials and politicians have fixated on worldwide protection of American intellectual property as one of the keystones to addressing the trade problem. Without question, the American creative genius has been nurtured by strong legal tradition of protecting the property rights of intellectual property owners. As we think about adjusting our lives and laws to meet the trade problem, I hope that we can proceed in a balanced, dispassionate and objective way. As important as this task is we should not take precipitous action as a palliative for short term problems.

Before outlining what are, in my view, the elements of a coherent and comprehensive approach to intellectual property and trade let me set the context.

Our key intellectual property laws -- copyright and patent -- are derived from the Constitutional mandate to "Promote the Progress of Science and Useful Arts, by securing for limited Times to Authors and Inventors the Exclusive Right to their Writings and Discoveries." (U.S. Constitution Art. 1, section 8, clause 8). The Constitution envisions a bargain. Creators and inventors receive a benefit -- a form of a limited monopoly

right. In exchange, the public arguably benefits twice -- first when it obtains access to the creation or invention, and second when the term of protection expires and the creation or invention is added to the public domain. This bargain furthers the public interest and does not represent in any way recognition of the natural right of creators and inventors to proprietary protection. Thus, our intellectual property laws -- including laws relating to trademark and mask works -- represent carefully fashioned compromises which limit the nature and extent of the rights of intellectual property owners. These limits include concepts such as "fair use" and "first sale" in copyright and the right to engage in "reverse engineering" with respect to mask works.

From a political perspective it is safe to say that our intellectual property laws are neither unlimited nor primarily designed to provide a special benefit. "Rather, the limited grant is a means by which an important public purpose may be achieved. Sony v. Universal City Studios, 464 U.S. 417, 429 (1984).

This perspective is important to keep in mind when addressing trade legislation affecting intellectual property. In my view, it would be a serious mistake to use legislation relating to international trade as a vehicle for changing the positive law

relating to intellectual property.* I am also hopeful that we will not ignore the public interest in a rush to protect what are currently perceived by some to be embattled industries. Ultimately, I think that we would strike a bad bargain on behalf of the public.

SUMMARY OF PROPOSALS

As Chairman of the Subcommittee on Courts, Civil Liberties and the Administration of Justice, Committee on the Judiciary, I have responsibility for overseeing the functioning of both the intellectual property system and the federal courts. The proposals I offer hopefully will preserve the appropriate role of the courts in adjudicating and enforcing intellectual property rights while simultaneously recalibrating the nature of the rights and remedies available to creators and inventors. In my view, a comprehensive trade-oriented intellectual property bill should include administrative law reform affecting the operation of the International Trade Commission (ITC).**

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* For example, we should avoid taking sides in the grey market or parallel import issue in trademark law or on first sale in copyright law, or on reverse engineering in mask work law.

** Additional measures to further classify the rights of intellectual property owners have already been considered. Congress -- through legislation processed by the Committee on Ways and Means -- has given the United States Trade Representative and the Department of State powerful weapons to use in bilateral negotiations in the context of the General System of Preferences (GSP) and the Carribean Basin Initiative (CBI). By permitting GSP and CBI benefits to be affected by the adequacy of our trading partners' intellectual property laws we have already wielded a big stick to induce greater intellectual property

The ITC is an independent federal agency, whose members are appointed by the President, authorized to adjudicate trade cases. The ITC is not and should not become an intellectual property court. In recent years section 337 of the Tariff Act of 1930 has been used to bring a number of patent, copyright and trademark cases before the ITC. There is no doubt that the ITC is an important -- if not essential -- supplement to the remedies available in the federal judicial branch. Because the ITC has in rem jurisdiction to exclude goods which would injure a domestic industry through unfair trade practices it differs both structurally and procedurally from a federal court. The ITC remedy does not pose an insurmountable jurisdictional barrier to unauthorized exploitation of American intellectual property, because its powers are limited to the exclusion of goods either at the border or before they meld into the stream of commerce. Although the decisions of the ITC are ultimately reviewable by the Court of Appeals for the Federal Circuit (the same circuit

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protection abroad.

Currently pending before my Subcommittee are two important measures affecting patent rights; process patent protection and legislation to implement the Patent Cooperation Treaty. Enactment of these measures would further align American law with internationally accepted norms of patent protection.

Finally, there have been proposals to make an intellectual property code part of the GATT and to adhere to the Berne Convention. While I remain skeptical about the wisdom of both of these initiatives, I know that the Administration will not proceed on these fronts without full consultation with both the House and the Senate, including all the relevant Committees.

that hears all appeals from district courts in patent cases), its procedures are not inherently judicial. For example, the ITC cannot assess damages, exercise any police power, nor can it hear counterclaims. Notwithstanding these limitations, however, the ITC currently is a potent weapon for the enforcement of intellectual property rights. The ITC presents the following advantages: (1) availability of an exclusion order preventing entry into the U.S. of all offending goods regardless of source; (2) extremely expedited procedures (cases must generally be concluded within a year); and (3) the ITC need only follow the Administrative Procedure Act (APA) rather than more cumbersome judicial rules.

Despite the relative advantages of an ITC remedy, there has been a growing consensus to make relief obtained in the ITC more effective and expeditious. While that sentiment is understandable, before acting we should be keenly aware of the nature and extent of the alleged problem.*** As you know, "if it isn't broken, don't fix it" is a common refrain in Congress. We must also keep in mind the bargain -- made on behalf of the public -- referred to above.

I cannot tell you exactly what is the problem. I do challenge you to carefully identify the ends served by any legislative solution to see if the ends justify the means.

*** See Testimony of ITC Chairwoman Paula Stern before my Subcommittee on Feb. 19, 1986.

Some have suggested eliminating the so-called injury test altogether. Such a change is ill-advised. First, it would transform the ITC into a court whose only job would be assessing patent validity and infringement. Such a role would be especially inappropriate for an agency which is five-sixth non-lawyers. Second, retention of the injury requirement is the quid pro quo we offer to importers in exchange for an expedited non-judicial proceedings in the ITC. Finally, elimination of the injury requirement could very likely produce serious challenges that future ITC orders violate the General Agreement on Tariff and Trade (GATT). GATT violations, if found, can trigger retaliatory discrimination against innocent American exporters, hardly a desirable result.

The other major suggestion that has received some level of support in the context of intellectual property and trade is the removal of the "domestic industry" requirement. If enacted, this proposal would allow -- if not encourage -- foreign patent holders (currently 40% of the total) to use the ITC to seek to exclude either their foreign or American competition from obtaining access to the United States market. Without the "domestic industry" requirement, this access would not be predicated on any investment in the United States. This change cannot be said to be an attempt to protect American jobs, quite the contrary is true. I should note parenthetically that it is

argued that by giving equal access to the ITC by foreign industries will encourage better treatment of American intellectual property abroad. This argument sounds like the hope of a negligent driver who pays part of the victim's hospital bill that he/she won't be sued. Stated differently, if we gratuitously grant access to the ITC to foreign concerns, it is claimed that they will not sue us in GATT.

This is not to say that no changes are required. A careful review of the ITC and its current problems would support the following five modifications:

(1) Create a rebuttable presumption that once a complainant establishes the existence of a federal, statutory, intellectual property right and an act of infringement that alone suffices to make a prima facie showing of "injury". This change would permit a respondent to show lack of "injury" (e.g. that the acts complained of produced no lost sale or profits).

(2) Modify the "domestic industry" requirement by allowing complaints to be filed by persons who have made "a substantial investment in facilities or activities relating to the exploitation of a patent, copyright, trademark or mask work, including research and development, licensing, sales and marketing." This adjustment will assure continued access to the ITC by entities, including universities, who

have a substantial stake in the United States. This change would also avoid the unfortunate results which have occurred in some recent cases (such as Gremlins) where -- because of pertinent legislative history explaining the current law -- the ITC has denied relief notwithstanding the existence of a larger service industry exploiting the intellectual property right within the United States. Finally, such a change will enable universities and small businesses who do not have the capital to actually make the good in the United States to still have access to the ITC forum for the protection of their rights.

(3) Transfer the "economically and efficiently operated" criteria from being an element of the complainant's case to a public interest factor to be evaluated by the ITC only in determining whether to approve a remedy. This change alone should limit the real and potential discovery abuse which can occur under current law.

(4) Grant the ITC authority to penalize or sanction abusive discovery efforts.

(5) Clarify the ITC's authority to: (a) issue cease and desist orders in addition to exclusion orders; (b) keep certain information confidential; (c) enter limited exclusion orders in default cases without a full hearing;

(d) grant preliminary relief; (e) require the posting of bonds by both parties; and (f) provide that certain forfeited bonds can be assigned to the prevailing party.

In sum, there are five non-draconian modifications to the Tariff Act which meet the legitimate concerns expressed by advocates of change. After carefully reviewing these issues, it is my hope that the Congress will agree upon a balanced approach affecting the rights of both consumers and producers while serving the public interest and meeting constitutional criteria.

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HLC

99TH CONGRESS
1ST SESSION

H. R. ____

IN THE HOUSE OF REPRESENTATIVES

Mr. KASTENMEIER introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the patent and trademark laws of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ``Intellectual Property and Trade Act''.

TITLE I--PATENT AND TRADEMARK AMENDMENTS

SEC. 101. USE OF PATENTED PROCESSES.

(a) INFRINGEMENT FOR IMPORTATION OR SALE.--Section 271 of title 35, United States Code, is amended by adding at the end the following new subsection:

``(e) Whoever without authority imports into the United States or sells within the United States a product which is directly made by a process patented in the United States shall be liable as an infringer, if the importation or sale of the product occurs during the term of such process patent.''.

(b) DAMAGES FOR INFRINGEMENT.--Section 287 of title 35, United States Code, is amended by adding at the end the following: ``No damages may be recovered for an infringement under section 271(e) of this title unless the infringer knew that the product was made by a process patented in the United States. Damages may be recovered only for infringement occurring after such knowledge.''.

(c) EFFECTIVE DATE.--The amendments made by subsections (a) and (b) shall apply only to United States patents granted on or after the date of the enactment of this Act.

SEC. 102. PATENT AND TRADEMARK LAWS AMENDMENTS.

(a) LATE FEE PAYMENT ALLOWED.--Section 8(c) of the Trademark Act of 1946 (commonly known as the Lanham Act) (15 U.S.C. 1058(c)) is amended by adding at the end the following: ``Fees for filing the affidavits, together with fees for late payment, may be accepted by the Commissioner after the filing of the affidavits.''.

(b) RENEWAL OF REGISTRATION.--Section 9(a) of the Trademark Act of 1946 (15 U.S.C. 1059(a)) is amended--

(1) in the first sentence by striking ``payment of the prescribed fee and'';

(2) by inserting after the first sentence the following: ``The fee required for renewal, the time of payment, and any fee for late payment shall be prescribed by the Commissioner.''; and

(3) in the second sentence by striking ``the additional fee herein prescribed'' and inserting ``a surcharge''.

(c) PERIOD FOR RESPONSE.--Section 12(b) of the Trademark Act of 1946 (15 U.S.C. 1062(b)) is amended--

(1) in the second sentence by striking ``six months'' and inserting ``3 months, or longer as may be prescribed by the Commissioner,'';

(2) in the third sentence by striking ``six months'' and inserting ``3 months, or longer as may be prescribed by the Commissioner,''; and

(3) by adding after the third sentence the following: ``The Commissioner shall prescribe fees for extending any time for response.''.

(d) EXTENSION OF PERIOD FOR OPPOSING MARK.--Section 13 of the Trademark Act of 1946 (15 U.S.C. 1063) is amended--

(1) in the second sentence by striking ``thirty days'' and inserting ``60 days''; and

(2) by inserting after the second sentence the following: ``The Commissioner shall prescribe conditions, including the payment of fees, for the further extensions.''.

(e) CHAIRMAN OF BOARD ADDED TO TRADEMARK TRIAL AND APPEAL BOARD.--Section 17 of the Trademark Act of 1946 (15 U.S.C. 1067) is amended in the second paragraph by striking ``and members'' and inserting ``and a chairman and members''.

(f) VERIFICATION REQUIREMENT FOR CANCELLATION PETITION DELETED.--Section 24 of the Trademark Act of 1946 (15 U.S.C. 1092) is amended by striking ``verified'' in the second sentence.

(g) CHAIRMAN AND VICE-CHAIRMAN ADDED TO BOARD OF PATENT APPEALS AND INTERFERENCES.--Section 7(a) of title 35, United States Code, is amended in the second sentence by inserting ``a chairman and a vice-chairman appointed by the Commissioner,'' after ``Assistant Commissioners,''.

(h) ATTESTATION REQUIREMENT FOR ISSUANCE OF PATENT

DELETED.--Section 153 of title 35, United States Code, is amended by striking ``and attested by an officer of the Patent and Trademark Office designated by the Commissioner''.

(i) PLANT PATENTS.--Section 163 of title 35, United States Code, is amended by inserting ``or any part thereof'' after ``reproduced''.

(j) EFFECTIVE DATE.--Subsection (i) shall apply only to acts of infringement committed on or after the date of the enactment of this Act. Subsections (a) through (h) shall take effect 6 months after the date of the enactment of this Act.

SEC. 103. ENFORCEMENT BY THE UNITED STATES ALLOWED IN CERTAIN PATENT APPLICATION CASES.

Section 135(c) of title 35, United States Code, is amended by adding at the end the following: ``The United States may bring an action for equitable or declaratory relief to enforce the provisions of this section.''.

TITLE II--ENFORCEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS, AND MASK WORKS IN INTERNATIONAL TRADE

SEC. 201. REFERENCE TO TARIFF ACT OF 1930.

Except as otherwise expressly provided, whenever in this title an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Tariff Act of 1930.

SEC. 202. UNFAIR PRACTICES IN IMPORT TRADE.

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(a) UNFAIR METHODS OF COMPETITION.--Subsection (a) of section 337 (19 U.S.C. 1337) is amended--

(1) by inserting ``(1)'' before the first sentence;

(2) by striking ``or tendency'';

(3) by striking ``, efficiently and economically operated,'';

(4) by inserting ``or to be a threat thereof,'' after ``in the United States,'';

(5) by inserting ``or substantially impair'' after ``prevent''; and

(6) by adding at the end the following:

``For purposes of this section, an `industry in the United States' includes a substantial investment in facilities or activities related to the exploitation of patents, copyrights, trademarks, or mask works described in paragraph (2), including research, development, licensing, sales, and marketing.

``(2) For purposes of this section, there is a rebuttable presumption that the following acts have the effect to destroy or substantially injure an industry, or to be a threat thereof, or to prevent or substantially impair the establishment of an industry:

``(A) Unauthorized importation of an article which infringes a valid and enforceable patent issued under title 35, United States Code, or the unauthorized sale of

such an imported article.

``(B) Unauthorized importation of an article which--

``(i) was made, produced, processed, or mined under, or by means of, a process covered by a claim of a valid and enforceable patent issued under title 35, United States Code, and

``(ii) if made, produced, processed, or mined in the United States, would infringe a valid and enforceable patent issued under title 35, United States Code,

or the unauthorized sale of such an imported article.

``(C) Unauthorized importation of an article which infringes a copyright registered under title 17, United States Code, or the unauthorized sale of such an imported article.

``(D) Importation of an article which infringes a valid and enforceable trademark registered under the Trademark Act of 1946, or the sale of such an imported article, if the manufacture or production of such imported article was unauthorized.

``(E) The importation of a semiconductor chip product in a manner that constitutes infringement of a mask work registered under chapter 9 of title 17, United States Code.''.

(b) DETERMINATIONS; REVIEW.--Subsection (c) of section

337 is amended--

(1) in the first sentence by inserting before the period the following: ``, except that the Commission may, by issuing a consent order or on the basis of a settlement agreement, terminate any such investigation, in whole or in part, without making such a determination''; and

(2) in the fifth sentence by inserting after ``its findings'' the following: ``on whether the adverse affected industry is efficiently and economically operated and its findings''.

(c) EXCLUSION OF ARTICLES FROM ENTRY.--Subsection (d) of section 337 is amended in the first sentence by inserting after ``considering'' the following: ``whether the adverse affected industry is efficiently and economically operated, and after considering''.

(d) EXCLUSION OF ARTICLES FROM ENTRY DURING INVESTIGATION EXCEPT UNDER BOND.--Subsection (e) of section 337 is amended--

(1) in the first sentence--

(A) by striking ``If'' and inserting ``(1) If''; and

(B) by inserting after ``considering'' the following: ``whether the adverse affected industry is efficiently and economically operated, and after

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considering''; and

(2) by adding at the end the following:

``(2) A complainant may petition the Commission for the issuance of an exclusion from entry under this subsection. The Commission shall, within 90 days after receipt of the petition, make a determination with regard to the petition. The Commission may extend that 90-day period for an additional 60 days in a more complicated case. The Commission shall publish in the Federal Register its reasons for designating any case as a more complicated case. The Commission may require the petitioner to post a bond as a prerequisite to the issuance of an exclusion from entry under this subsection.

``(3) The Commission may grant preliminary relief under this subsection with respect to a violation involving a registered trademark, copyright, or mask work or a patent, to the same extent as preliminary injunctions and temporary restraining orders may be granted under the Federal Rules of Civil Procedure.''.

(e) CEASE AND DESIST ORDERS.--Subsection (f) of section 337 is amended--

(1) in paragraph (1)--

(A) by striking ``In lieu of'' and inserting ``In addition to, or in lieu of,''; and

(B) by inserting after ``considering'' the

following: ``whether the adversely affected industry is efficiently and economically operated, and after considering''; and

(2) in paragraph (2) by striking ``$10,000'' and inserting ``$100,000''.

(f) DEFAULT.--Section 337 is amended--

(1) by redesignating subsections (g), (h), (i), and (j) as subsections (i), (j), (k), and (l), respectively; and

(2) by inserting after subsection (f) the following new subsections:

``(g) DEFAULT.--(1) If--

``(A) a complaint is filed against a person under this section;

``(B) the complaint and a notice of investigation are served on the person;

``(C) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice;

``(D) the person fails to show good cause why the person should not be found in default; and

``(E) the person seeks relief affecting solely that person,

the Commission shall presume the facts alleged in the complaint to be true and shall, upon request, issue an

exclusion from entry or order, or both, which affects only that person unless, after considering whether the adversely affected industry is efficiently and economically operated and after considering the effect of such exclusion or order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the Commission finds that such exclusion or order should not be issued.

``(2) An in rem exclusion from entry of the articles concerned, regardless of the source or importer of the articles, may not be issued under paragraph (1) unless a violation of the provisions of this section is established by substantial, reliable, and probative evidence.

``(h) ABUSE OF PROCESS.--The Commission may by rule prescribe sanctions for abuse of discovery and abuse of process to the extent authorized by Rule 11 and Rule 37 of the Federal Rules of Civil Procedure.''.

(g) PERIOD OF EFFECTIVENESS.--Subsection (j) of section 337, as redesignated by subsection (f)(1) of this section, is amended--

(1) by inserting ``(1)'' before the first sentence; and

(2) by adding at the end the following:

``(2) If any person who has previously been found by the

Commission, on the basis of a contested proceeding, to be in violation of this section petitions the Commission for a determination that the petitioner is no longer in violation of this section or for a modification or recission of an exclusion from entry or order under subsection (d), (e), (f), or (g)--

``(A) the burden of proof in any proceeding before the Commission regarding such petition shall be on the petitioner; and

``(B) relief may be granted by the Commission with respect to such petition only on the basis of new evidence or evidence that could not have been presented at the prior proceeding.''.

(h) IMPORTATION BY OR FOR THE UNITED STATES.--Subsection (k) of section 337, as redesignated by subsection (f)(1) of this section, is amended--

(1) in the first sentence by striking ``claims of United States letters patent'' and inserting ``any claim of a patent, copyright, trademark, or mask work''; and

(2) in the second sentence by striking ``a patent owner'' and inserting ``an owner of the patent, copyright, trademark, or mask work''.

(i) CONFIDENTIALITY OF INFORMATION.--Section 337, as amended by subsection (f) of this section, is amended by adding at the end the following:

``(m) CONFIDENTIAL INFORMATION.--(1) Information submitted to the Commission or exchanged among the parties in connection with proceedings under this section which is designated as confidential by the person submitting it may not be disclosed (except under a protective order issued under regulations of the Commission which authorizes limited disclosure of such information) to any person (other than a person described in paragraph (2)) without the consent of the person submitting it.

``(2) Notwithstanding the prohibition contained in paragraph (1), information referred to in that paragraph may be disclosed to--

``(A) an officer or employee of the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted, or

``(B) an officer or employee of the United States Customs Service who is directly involved in administering an exclusion from entry under this section resulting from the investigation in connection with which the information is submitted.''.

(j) TECHNICAL AMENDMENTS.--Section 337 is amended--

(1) in subsection (c)--

(A) by striking ``(d) or (e)'' and inserting ``(d), (e), or (f)'',

(B) by striking ``or (f)'' and inserting ``(f),

or (g)'', and

(C) by striking ``and (f)'' and inserting ``(f), and (g)'';

(2) in subsection (i) (as redesignated by subsection (f)(1) of this section), by striking ``or (f)'' each place it appears and inserting ``(f), or (g)'';

(3) in subsection (j) (as redesignated by subsection (f)(1) of this section), by striking ``(g)'' and inserting ``(i)''; and

(4) in subsection (k) (as redesignated by subsection (f)(1) of this section), by striking ``or (f)'' and inserting ``(f), or (g)''.

SEC. 203. EFFECTIVE DATE.

(a) IN GENERAL.--Subject to subsection (b), the amendments made by this title shall apply with respect to findings made by the United States International Trade Commission under section 337 of the Tariff Act of 1930 on or after the date of the enactment of this Act.

(b) APPLICABILITY TO CERTAIN PRIOR FINDINGS.--Section 337(j)(2) of the Tariff Act of 1930, as added by section 202(g) of this Act, shall apply with respect to findings of the International Trade Commission made before the date of the enactment of this Act, except that with respect to any such finding regarding which the President did not take action under section 337 of the Tariff Act of 1930 before

such date of enactment, the finding shall be treated as having been received by the President on such date.

TITLE III--PATENT COOPERATION TREATY AUTHORIZATION

SEC. 301. REFERENCE TO TITLE 35, UNITED STATES CODE.

Whenever in this title an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 35, United States Code.

SEC. 302. DEFINITIONS.

(a) TREATY.--Section 351(a) is amended by striking ``, excluding chapter II thereof''.

(b) REGULATIONS.--Section 351(b) is amended by striking ``excluding part C thereof''.

(c) INTERNATIONAL SEARCHING AUTHORITY AND INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY.--Section 351(g) is amended by striking ``term `International Searching Authority' means'' and inserting ``terms `International Searching Authority' and `International Preliminary Examining Authority, mean''.

SEC. 303. TIME FOR FILING FEES.

Section 361(d) is amended to read as follows:

``(d) The international fee, and the transmittal and search fees prescribed under section 376(a) of this part, shall be paid either on filing of an international application or within such later time as the Commissioner may

prescribe.''.

SEC. 304. PATENT OFFICE AS INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY.

(a) AUTHORITY OF PATENT OFFICE.--Section 362 is amended to read as follows:

``§362. International Searching Authority and International Preliminary Examining Authority

``(a) The Patent and Trademark Office may act as an International Searching Authority and an International Preliminary Examining Authority with respect to international applications in accordance with the terms and conditions of an agreement which may be concluded with the International Bureau, and may discharge all duties required of such Authorities, including the collection of handling fees and their transmittal to the International Bureau.

``(b) The handling fee, preliminary examination fee, and any additional fees due for international preliminary examination shall be paid within such time as the Commissioner may prescribe.''.

(b) CONFORMING AMENDMENT.--The item relating to section 362 in the table of sections for chapter 36 is amended to read as follows:

``362. International Searching Authority and International Preliminary Examining Authority.''.

SEC. 305. INTERNATIONAL STAGE: PROCEDURE.

Section 364(a) is amended by striking ``or International Searching Authority, or both,'' and inserting ``, an International Searching Authority, or an International Preliminary Examining Authority,''.

SEC. 306. SECRECY OF INTERNATIONAL APPLICATIONS.

Section 368(c) is amended by striking ``or International Searching Authority, or both,'' and inserting ``, an International Searching Authority, or an International Preliminary Examining Authority''.

SEC. 307. COMMENCEMENT OF NATIONAL STAGE.

(a) RECEIPT OF DOCUMENTS FROM THE INTERNATIONAL BUREAU.--Subsection (a) of section 371 is amended to read as follows:

``(a) Receipt from the International Bureau of copies of international applications with any amendments to the claims, international search reports, and international preliminary examination reports (including any annexes thereto) may be required in the case of international applications designating or electing the United States.''.

(b) TIME LIMIT FOR COMMENCEMENT OF NATIONAL STAGE.--Subsection (b) of section 371 is amended to read as follows:

``(b) Subject to subsection (f) of this section, the national stage shall commence with the expiration of the applicable time limit under article 22(1) or (2) or under

article 39(1)(a) of the treaty.''.

(c) FILING OF ENGLISH TRANSLATION.--Subsection (c) of section 371 is amended--

(1) in paragraph (4) by striking the period and inserting ``; and''; and

(2) by adding at the end the following:

``(5) a translation into the English language of any annexes to the international preliminary examination report, if such annexes were made in another language.''.

(d) TIME PERIOD FOR SUBMISSION OF ANNEXES.--Subsection (d) of section 371 is amended by adding at the end the following new sentence: ``The requirement set forth in subsection (c)(5) shall be complied with at such time as the Commissioner may prescribe, and failure to do so shall be regarded as cancellation of the amendments made under article 34(2)(b) of the treaty.''.

(e) TIME PERIOD FOR PRESENTATION OF AMENDMENTS.--Subsection (e) of section 371 is amended by inserting ``or article 41'' after ``28''.

SEC. 308. FEES.

(a) HANDLING AND PRELIMINARY EXAMINATION FEES.--Subsection (a) of section 376 is amended--

(1) by striking ``fee, which amount is'' and inserting ``fee and the handling fee, which amounts are'';

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following new paragraph:

``(5) A preliminary examination fee and any additional fees (see section 362(b)); and''.

(b) PRESCRIPTION AND REFUNDABILITY OF FEES.--Subsection (b) of section 376 is amended--

(1) in the first sentence by inserting ``and the handling fee'' after ``international fee''; and

(2) in the third sentence by inserting ``the preliminary examination fee, and any additional fees,'' after ``fee,''.

SEC. 309. EFFECTIVE DATE.

The amendments made by this title--

(1) shall take effect on the same day as the effective date of entry into force with respect to the United States of chapter II of the Patent Cooperation Treaty, on account of the withdrawal of the declaration under article 64(1)(a) of the Patent Cooperation Treaty; and

(2) shall apply to all international applications pending on or filed on or after the date on which the amendments made by this title take effect.

Mr. JENKINS. Carlos.

STATEMENT OF HON. CARLOS J. MOORHEAD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MOORHEAD. Thank you, Mr. Chairman. I am pleased to have this opportunity to appear before you this morning to discuss title II of my bill, H.R. 3776.

I think we all know we have got a problem, between our deficit of trade, with the massive foreign materials coming into this country that are using our copyrights and our patents and beating us with our own ingenuity.

With increasing frequency, foreign firms are pirating American inventions, and then shipping those products back to the United States. The International Trade Commission estimated, back in 1982, that infringement of U.S. intellectual property cost Americans 131,000 jobs in just five selected industrial sectors, and cost the Nation's businesses $6 billion to $8 billion in annual sales.

Since then, the problem has gotten worse. Piracy occurs in items as diverse as toy gremlins, amorphous metals, drugs, heart pumps, missiles, fighter planes and helicopter parts.

One remedy is provided by section 337 of the Tariff Act of 1930—19 U.S.C. 1337. It gives the International Trade Commission the general power to exclude imports when the importer engages in "unfair methods of competition or unfair acts." The law has been used to keep out pirated products, but the law needs to be strengthened, and that is what title II of H.R. 3776 is intended to do. The purpose of the International Trade Commission is to ensure that our domestic industries are protected from injury arising out of unfair methods of competition in the import trade. Since the 1940's, section 337 of the Tariff Act of 1930 was rarely utilized and did not become actively pursued by domestic industries until the 1974 amendments.

What is at stake here are American industries, American jobs, and American production. Because this law was not designed specifically to protect intellectual property rights, it requires a complaining party to show that the imports threaten an efficient and economically operated domestic industry with destruction or substantial injury. Only then can relief be granted. Where trade affects the rights of patent, copyright or trademark owners in the United States, it should be enough that the articles infringe a patent, trademark or copyright.

The most difficult and most costly burden in pursuing an action before the ITC is meeting the injury test. The only relief a complaining party can obtain before the ITC is an order stopping the infringing goods from coming into this country. No money damages are available to complainants before the ITC. To prove injury and that an industry is efficiently and economically operated requires extensive use of discovery and extensive use of deposition, at an enormous cost to the complaining party. It is more than just money—although we have testimony before our Copyright Subcommittee that legal fees alone can run anywhere between $2 and $3 million—these parties must disclose information relating to the management and operation of their business. In effect, they are

forced to disclose this confidential information to their foreign competitor. This is, in my opinion, a very high price to pay, and I am sure it is an obstacle which precludes many American businesses from using the ITC, even though it is clear that they are getting ripped off by their foreign competitors. I believe that any meaningful reform of the ITC must eliminate the injury and the efficiently economically operated standard in all intellectual property cases, including semiconductor mask cases.

In an action for copyright and patent infringement in a U.S. district court against a domestic company a plaintiff need not prove injury to a domestic industry efficiently and economically operated, he need only prove infringement. However, a U.S. owner of a copyright or patent, in an action before the ITC, has to meet a higher burden of proof in order to recover against a foreign infringer. The ITC may only grant relief if imports of the infringing product have the effect or tendency "to substantially injure or destroy a domestic industry, efficiently and economically operated in the United States." Thus, a U.S. complainant before the ITC must meet both an "injury test" and an "industry test" before recovering against a foreign infringer.

Mr. Chairman, the thing that bothers me, we are always trying to find ways to slow down the foreign imports to our country, to help our balance of trade. We have had before us in the last year or two many bills which would be protectionist in nature, regardless of whether it is infringement or no infringement.

But here we find a situation where people are stealing our products. They are infringing on American industry with an American product that the American people own and have discovered and developed, and yet we are very shy, we don't want to hurt anyone's feelings, we want to stand back.

All I want to see us do is stand up for what is our own, and if we can compete with the world on a level table, we can do very well. One of the reasons we are not doing very well is because we are not standing up for our own rights, and not insisting upon protecting Americans from things that America owns.

That is why I want to see some changes made. My bill has a number of other things that requires the ITC to act promptly on request for relief pending for final resolution of a complaint.

It confirms the principle of finality of ITC judgments, also grants the ITC the power to order the forfeiture of articles, and it spreads the granting of limited exclusion orders where the respondent defaults.

I understand the concerns of my colleague, Bob Kastenmeier. He certainly does a beautiful job in our subcommittee, and we are in agreement on most things, but I guess I get a little bit disappointed with America's ability to stand up for what is their own.

We don't need to go over and tell people they can't bring things to the United States, they have a right to bring here. We don't need to have all kinds of protectionist measures through our products.

We can stand on our own. But let's protect our own. Thank you, Mr. Chairman.

[The prepared statement follows:]

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With increasing frequency, foreign firms are pirating American inventions, and then shipping those products back to the United States. The International Trade Commission estimated back in 1982, that infringement of U.S. intellectual property cost Americans 131,000 jobs, in just five selected industrial sectors, and cost the Nation's businesses $6 billion to $8 billion in annual sales.

Since then the problem has gotten worse. Piracy occurs in items as diverse as toy gremlins, amorphous metals, drugs, heart pumps, missiles, fighter planes and helicopter parts.

One remedy is provided by section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). It gives the International Trade Commission the general power to exclude imports when the importer engages in "unfair methods of competition or unfair acts." The law has been used to keep out pirated products, but the law needs to be strengthened, and that is what title II of H.R. 3776 is intended to do. The purpose of the International Trade Commission is to ensure that our domestic industries are protected from injury arising out of unfair methods of competition in the import trade. Since the 1940's Sec. 337 of the Tariff Act of 1930 was rarely utilized and did not become actively pursued by domestic industries until the 1974 amendments.

What's at stake here are American industries, American jobs, and American production. Because this law was not designed specifically to protect intellectual property rights, it requires a complaining party to show that the imports threaten an efficient and economically operated domestic industry with destruction or substantial injury. Only then, can relief be granted. Where trade affects the rights of patent, copyright, or trademark owners in the United States, it should be enough that the articles infringe a patent, trademark or copyright.

The most difficult and most costly burden in pursuing an action before the ITC is meeting the injury test. The only relief a complaining party can obtain before the ITC is an order stopping the infringing goods from coming into this country. No money damages are available to complainants before the ITC. To prove injury and that an industry is efficiently and economically operated requires extensive use of discovery and extensive use of deposition, at an enormous cost to the complaining party. It's more than just money, (although we have testimony before our copyright subcommittee, that legal fees alone can run anywhere between $2 and $3 million dollars) these parties must disclose information relating to the management and operation of their business. In effect, they're forced to disclose this confidential information to their foreign competitor. This is, in my opinion, a very high price to pay and I am sure it's an obstacle which precludes many American businesses from using the ITC, even though it's clear that they are getting ripped-off by their foreign competitors. I believe, that any meaningful reform of the ITC must eliminate the injury and the efficiently economically operated standard in all intellectual property cases, including semiconductor mask cases.

In an action for copyright or patent infringement in a U.S. district court against a domestic company a plaintiff need not prove injury to a domestic industry efficiently and economically operated, he need only prove infringement. However, a U.S. owner of a copyright or a patent, in an action before the ITC has to meet a higher burden of proof in order to recover against a foreign infringer. The ITC may only grant relief if imports of the infringing product have the effect or tendency "to substantially injure or destroy a domestic industry, efficiently and economically operated in the United States." Thus, a U.S. complainant before the ITC must meet both an "injury test" and an "industry test" before recovering against a foreign infringer while neither of such tests need be met in an action in U.S. Court against an American infringer. H.R. 3776 would eliminate both tests. Although the domestic industry test provision is not as burdensome or as costly as the injury test, it does add needless uncertainties. The industry test also prevents universities and research institutions from using the ITC for enforcing their patents, copyrights and trademarks because they are not in business.

H.R. 3776 would make additional changes in section 337. It would require the ITC to act promptly on requests for relief pending the final resolution of a complaint. In cases where a key shipment of infringing goods is on its way, or a critical selling season's approaching, the failure of the ITC to act promptly inflicts harm on the intellectual property owners that is not easily remedied. In order to overcome reluctance in the granting of temporary exclusion orders, the ITC is given the discretion to require the party seeking the order to put up a bond.

H.R. 3776 also confirms the principle of finality of ITC judgments. There are cases, for example, where a party that is subject to an exclusion order for infringing a patent comes forth seeking a determination that it no longer infringes or seeks a modification of the order. The intellectual property owner is faced with additional litigation, to preserve the rights it so recently enforced. The bill would confirm that the burden of proof in this subsequent proceeding is clearly on the party that was found in violation of the law. That party would be estopped from raising claims that could have been raised in the previous proceeding.

H.R. 3776 also grants the ITC the power to order the forfeiture of articles. In principle, a general exclusion order is a powerful remedy, blocking the entry of goods, and forcing return. In reality, the Customs Service simply cannot and does not catch all infringing goods. When it does stop articles, it orders only that they be returned, and risks that there will be a second effort to import the goods, an effort that may elude detection. Forfeiture would make sure that pirates and counterfeiters do not have a second chance.

H.R. 3776 also speeds the granting of limited exclusion orders where a respondent defaults. The ITC may be justified in its current practice of establishing an adequate basis for a general exclusion order, even where respondents default, because of the broad nature of the remedy. However, where a party seeks a limited exclusion order, and a party defaults without good cause, relief should be forthcoming. Of course, securing a limited exclusion order when a party is in default should not preclude the complainant from securing a general exclusion order as well if a prima facie case is made.

Similar legislation has been introduced in the Senate by Senators Lautenberg and Roth, S. 1647. Similar legislation has also been reported by the House Commerce Committee, H.R. 3777, and legislation is also being drafted by this subcommittee, all of which would eliminate the injury test. I would encourage this subcommittee to act expeditiously in reporting out a measure similar to title II of H.R. 3776 and I hope we can work together to get this measure through the House and down to the President as soon as possible.

Mr. JENKINS. Thank you. I want to thank both of you for your testimony.

Bob, I believe the subcommittee draft bill, while it eliminates the injury test, which I disagree with, but I think it retains the domestic industry requirements in the subcommittee draft. There have been proposals within the subcommittee to eliminate that provision as well.

I think the draft, the committee draft, retains the domestic industry requirement. While it may be changed in the markup, nevertheless I think it is retained in the present draft.

I want to thank both of you for your testimony. This is an interesting area for me, because I have never been involved in it, and I think there are some real problems.

I have some problems with the retention of the injury test personally, because it appears to me that we don't have the problem that a lot of people see with violation of GATT. I don't see it.

The administration is supporting this position. It would appear to me if they thought there was a GATT violation, they couldn't easily support it. I want to thank both of you for your testimony.

Mr. MOORHEAD. Thank you.

Mr. KASTENMEIER. May I file my statement in its entirety?

Mr. JENKINS. The entire statement of both of you will be included in the record, without objection.

Our next panel will please come forward.

Dennis McArdle, secretary and associate general counsel, Outboard Marine Corp.; Roger Schagrin, executive director, and John Lison, vice chairman, Committee on Pipe & Tube Imports; Mr. Ronald Gerson, president, Louis M. Gerson Co.; and Phil Ola of the

Steel Service Center Institute and Murray Belman for the Cold Finished Steel Bar Institute.

I want to express my appreciation to the panel for coming on a Friday, to give testimony. Each of your prepared statements will be included in the record in their entireties. So that if we might, since we have a large panel, we will summarize, and I will begin with Dennis McArdle.

STATEMENT OF DENNIS E. McARDLE, SECRETARY AND ASSOCIATE GENERAL COUNSEL, OUTBOARD MARINE CORP.

Mr. McARDLE. My name is Dennis McArdle, and I am secretary and associate general counsel of Outboard Marine Corp., headquartered in Waukegan, IL. I appreciate this opportunity to discuss a serious problem of unfair trade practices that affect our company and other companies that compete in the international arena.

Outboard Marine Corp. manufactures and sells Johnson and Evinrude outboard motors. We are the largest producer of outboards in the world, and have always been export oriented. In 1985, exports accounted for nearly one-quarter of our net sales.

Our U.S. operations alone employ over 3,500 people. A great many of these people are located at our headquarters in Waukegan, and I am pleased to note that a member of this panel, Congessman Crane, represents a portion of Waukegan. We also have a relatively new and large facility in Calhoun, GA in the middle of your district, Mr. Chairman. A large portion of what we manufacture in Calhoun is exported, so our Calhoun employees are particularly grateful for Mr. Jenkins' interest in addressing some of the trade problems facing Outboard Marine Corp. which involve dumping by our foreign competitors into our export markets. This is the subject of my testimony today.

The world outboard motor market is limited in size and is intensely competitive. The total world demand for outboards is less than 1 million units annually. This compares with demand of 10 million units annually for automobiles in the United States alone. Unfortunately, over the last 10 years the number of suppliers to the world market for outboard motors has about doubled, due to the entry of several major Japanese manufacturers of motor vehicles, including Yamaha, Suzuki and Honda. To meet the challenge, we have embarked on a major capital investment program that has made our operations among the most efficient and low cost in the world without moving out of the United States.

Moreover, in order to maintain Outboard Marine Corp.'s strong market position and to preserve Outboard Marine Corp.'s longstanding reputation for worldwide technological leadership in the marine business, we have accelerated the development of new products. More new products have been introduced in the last 2 years than at any other time in history.

This has been a highly successful campaign, but we continue to face severe difficulties in selling our products overseas. Our Japanese competitors are, for the most part, diversified manufacturers of other products, including motorcycles and automobiles. They can afford to suffer losses in outboard motors for an extended period while they dump into various markets worldwide. Outboard

Marine Corp., on the other hand, relies overwhelmingly on outboard motors for our profitability. We cannot afford sustained losses.

Japanese outboard manufacturers have dumped their export products in Europe, Australia, Latin America, Southeast Asia and elsewhere. All of these are important export markets for Outboard Marine Corp. In Europe and Australia, where Outboard Marine Corp. has subsidiaries, antidumping actions were brought against these practices, and the authorities there found substantial Japanese violations under dumping laws that are consistent with the 1979 GATT Antidumping Code. Dumping margins found were as high as 50 percent, injury to the domestic industry caused by dumping was found, and corrective measures were imposed. However, in countries where we have no subsidiaries, Outboard Marine Corp. has no practical trade law remedies.

We expect that this pattern of injurious dumping will be repeated in the United States. It is only a question of time and convenience to the Japanese. Once our Japanese competitors have carved off our export markets, we are more vulnerable to an onslaught of dumping in the United States. The U.S. market for outboard motors is wide open. The U.S. duty on outboards is due to fall to zero next January and there are no U.S. non-tariff barriers to imports of outboards.

Markets are often international in scope. In many cases, an exporter may engage in dumping not merely to gain access to a particular national market, but as part of an overall strategy to eliminate competitors worldwide. Many U.S. companies compete in worldwide markets and therefore can be the target of dumping in many markets. The strangulation of U.S. export markets injures the domestic industry as surely and severely as dumping in the United States itself.

In addition, the fact that certain foreign competitors have already been found to have dumped their products internationally, to the injury of the domestic industries, should be a clear signal to the United States that this pattern of pressing dumping to the point of injury will be repeated here. This is a signal that we cannot afford to ignore.

The U.S. trade laws already address some of the unfair trade practices that injure U.S. export markets. But dumping by private parties into United States export markets has no remedy under existing law. We have been encouraged in recent discussions with this subcommittee's members and staff, and most particularly yourself, Mr. Chairman, you have recognized a strong need to change the United States trade laws to deal with this kind of unfair marketing strategy. We support legislation that would create a statutory presumption that imports sold at less than fair value in the United States constitute a threat of material injury to U.S. producers of similar goods if authorities in at least two other GATT member nations have imposed dumping remedies against imports of such goods from the same country.

This presumption could be rebutted either by showing that producers under investigation in the United States were not the same as those who engaged in dumping in other markets, or by showing that because of specific changed circumstances occurring since the

imposition of antidumping remedies, in the other GATT members' markets, the injury caused in those markets will not be repeated in the United States.

The relative uniformity in the administering of dumping laws in GATT member nations ensures the integrity of their dumping figures and the seriousness of the injury done to their markets.

The proposal we are advancing here today would not alter the two-part structure for obtaining dumping relief. Positive findings concerning both less than fair value sales and injury would still need to be made, but the proposal would create a statutory presumption in certain circumstances to satisfy the injury requirement more readily.

Our proposal is made in order to combat a problem that does not now have a remedy. We at Outboard Marine Corp. believe that a remedy can and should be created, in whatever form is effective, and we approach this issue with flexibility. We look forward to working together to solve the problem.

If you have any questions, I will be more than happy to answer them at this time.

Mr. JENKINS. Thank you very much for your testimony, Mr. McArdle.

[The prepared statement follows:]

Summary Statement of
Dennis E. McArdle
Outboard Marine Corporation

April 11, 1986

Outboard Marine Corporation manufacturers and sells Johnson and Evinrude outboard motors. We are the largest producer of outboards in the world. In 1985, exports accounted for nearly one-quarter of our net sales.

We have embarked on a major capital investment program that has made our operations among the most efficient and low-cost in the world, without moving out of the United States. This has been a highly successful campaign, but we continue to face severe difficulties in selling our products overseas. Our Japanese competitors are, for the most part, diversified manufacturers of other products. They can afford to suffer losses in outboard motors for an extended period while they dump into various markets worldwide. In addition, our competitors have the benefit of high prices in their protected home market. With the help of these advantages, our competitors have dumped their products in Europe, Australia, Latin America, and Southeast Asia.

In Europe and Australia, where OMC has subsidiaries, antidumping actions were brought against these practices, and the authorities there found substantial Japanese violations under dumping laws that are consistent with the 1979 GATT Antidumping Code. However, in countries where we have no subsidiaries, OMC has no practical trade law remedies. We expect that this pattern of injurious dumping will be repeated in the United States.

The U.S. trade laws already address some of the unfair trade practices that injure U.S. export markets. But dumping by private parties into U.S. export markets has no remedy under existing law. Thus, we support changes to the U.S. anti-dumping statute that would create a statutory presumption that imports sold at less than fair value in the United States constitute a "threat of material injury" to the U.S. producers of similar goods, if authorities in at least two other GATT member nations have imposed dumping remedies against imports of such goods from the same country. This presumption could be rebutted either by showing that the importers under investigation in the United States were not the same as those who engaged in dumping in the other markets, or by showing that because of specific changed circumstances occurring since the imposition of anti-dumping remedies in other GATT member markets, the injury caused in those markets will not be repeated in the United States. The relative uniformity in the administration of dumping laws in GATT member nations ensures the integrity of their dumping findings and the seriousness of the injury done to their markets.

Statement of

Dennis E. McArdle
Secretary and Associate General Counsel

Outboard Marine Corporation

My name is Dennis McArdle, and I am Secretary and Associate General Counsel of Outboard Marine Corporation, headquartered in Waukegan, Illinois. I appreciate this opportunity to discuss a serious problem of unfair trade practices that affect our company and other companies that compete in the international arena.

OMC manufacturers and sells Johnson and Evinrude outboard motors. We are the largest producer of outboards in the world, and have always been export-oriented. In 1985, exports accounted for nearly one-quarter of our net sales.

Our U.S. operations alone employ over 3,500 people. A great many of these people are located at our headquarters in Waukegan, and I am pleased to note that a member of this panel, Congressman Crane, represents a portion of Waukegan. We also have a relatively new and large facility in Calhoun, Georgia in the middle of Congressman Jenkins' district. A large portion of what we manufacture in Calhoun is exported, so our Calhoun employees are particularly grateful for Mr. Jenkins' interest in addressing some of the trade problems facing OMC which involve dumping by our foreign competitors into our export markets. This is the subject of my testimony today.

The world outboard motor market is limited in size and is intensely competitive. The total world demand for outboards is less than 1 million units annually. This compares

with demand of 10 million units annually for automobiles in the United States alone. At the same time, over the last 10 years the number of suppliers to the world market for outboard motors has about doubled, due to the entry of several major Japanese manufacturers of motor vehicles, including Yamaha, Suzuki and Honda. To meet the challenge, we have embarked on a major capital investment program that has made our operations among the most efficient and low-cost in the world, without moving out of the United States. Moreover, in order to maintain OMC's strong market position and to preserve OMC's long-standing reputation for world-wide technological leadership in the marine business, we have accelerated the development of new products. More new products have been introduced in the last two years than at any other time in our history.

This has been a highly successful campaign, but we continue to face severe difficulties in selling our products overseas. Our Japanese competitors are, for the most part, diversified manufacturers of other products, including motorcycles and automobiles. They can afford to suffer losses in outboard motors for an extended period while they dump into various markets worldwide. OMC, on the other hand, relies overwhelmingly on outboard motors for our profitability. We cannot afford sustained losses. In addition, our competitors have the benefit of high prices in their protected

home market. With this advantage, Japanese outboard manufacturers have dumped their export products in Europe, Australia, Latin America, Southeast Asia and elsewhere. All of these are important export markets for OMC. In Europe and Australia, where OMC has subsidiaries, antidumping actions were brought against these practices, and the authorities there found substantial Japanese violations under dumping laws that are consistent with the 1979 GATT Antidumping Code. Dumping margins found were as high as 50 percent, injury to the domestic industry caused by dumping was found, and corrective measures were imposed. However, in countries where we have no subsidiaries, OMC has no practical trade law remedies.

We expect that this pattern of injurious dumping will be repeated in the United States. Once our Japanese competitors have carved off our export markets, we are more vulnerable to an onslaught of dumping in the United States. The U.S. market for outboard motors is wide open. The U.S. duty on outboards is due to fall to zero next January and there are no U.S. non-tariff barriers to imports of outboards.

Markets are often international in scope. In many cases, an exporter may engage in dumping not merely to gain access to a particular national market, but as part of an overall strategy to eliminate competitors worldwide. Many U.S. companies compete in worldwide markets and therefore

can be the target of dumping in many markets. The strangulation of U.S. export markets injures the domestic industry as surely and severely as dumping in the United States itself. In addition, the fact that certain foreign competitors have already been found to have dumped their products internationally, to the injury of the domestic industries, should be a clear signal to the United States that this pattern of pressing dumping to the point of injury will be repeated here. This is a signal that we cannot afford to ignore.

The U.S. trade laws already address some of the unfair trade practices that injure U.S. export markets. For example, Section 301 has been used to combat export subsidies and other practices of foreign governments that affect U.S. industries primarily in their exports. But dumping by private parties into U.S. export markets has no remedy under existing law.

Over the past several months, OMC has had a number of discussions with Congressman Jenkins and the Ways and Means Trade Subcommittee professional staff. These discussions have been most helpful, and we are encouraged to see a strong recognition of the need to change the U.S. trade laws to deal with the kind of unfair marketing strategies which OMC is experiencing. We have discussed with Congressman Jenkins and with the Subcommittee's staff legislation that

would create a statutory presumption that imports sold at less than fair value in the United States constitute a "threat of material injury" to the U.S. producers of similar goods, if authorities in at least two other GATT member nations have imposed dumping remedies against imports of such goods from the same country. This presumption could be rebutted either by showing that the importers under investigation in the United States were not the same as those who engaged in dumping in the other markets, or by showing that because of specific changed circumstances occurring since the imposition of anti-dumping remedies in other GATT member markets, the injury caused in those markets will not be repeated in the United States. The relative uniformity in the administration of dumping laws in GATT member nations ensures the integrity of their dumping findings and the seriousness of the injury done to their markets.

Current U.S. antidumping law provides a two-part test for the imposition of antidumping duties on imported merchandise sold in the United States. Broadly speaking, such duties may be imposed if both (a) the Department of Commerce finds that the merchandise "is being, or is likely to be, sold in the United States at less than its fair value"; and (b) the International Trade Commission finds that such sales have "materially injured" or "threatened with material injury" an industry in the United States, or

have "materially retarded" the establishment of a U.S. industry.

The proposal we are advancing here today would not alter this bifurcated structure for obtaining dumping relief. Positive findings concerning both less than fair value sales and injury would still need to be made, but the proposal would create a statutory presumption in certain circumstances to satisfy the injury requirement more readily.

The proposal would also add to the criteria for "threat of material injury" that were established in the Trade and Tariff Act of 1984. The 1984 Act set forth eight factors that the ITC shall consider, along with other economic factors, in determining whether a "threat of material injury" exists. The proposal would add a ninth factor providing that in antidumping investigations, the ITC shall take into account evidence of dumping of similar merchandise into another GATT member market. The net effect of the proposed change to the U.S. anti-dumping laws would be that dumping into a single foreign market would be relevant to the ITC's determination of "threat of material injury," while the statutory presumption of such a threat would not take effect unless dumping had been found in two or more GATT member markets.

Our proposal is made in order to combat a problem that does not now have a remedy. We at OMC believe that a remedy can and should be created, in whatever form is effective, and we approach this issue with flexibility. We look forward to working together to solve the problem.

I would be happy to answer any questions you may have. Thank you very much.

We will now hear from the representative from the Committee on Pipe & Tube Imports.

STATEMENT OF ROGER B. SCHAGRIN, EXECUTIVE DIRECTOR, COMMITTEE ON PIPE & TUBE IMPORTS, ACCOMPANIED BY JOHN LISON, VICE CHAIRMAN (VICE PRESIDENT, ATCOR, INC.)

Mr. SCHAGRIN. Good morning, my name is Roger Schagrin. I am a Washington trade attorney, and I also serve as executive director and general counsel of the Committee on Pipe & Tube Imports. I am accompanied by Mr. John Lison, vice president and general counsel of ATCOR, Inc., who also serves as vice chairman of the Committee on Pipe & Tube Imports.

The Committee on Pipe & Tube Imports is a trade association of domestic producers of steel pipe and tube products. Since 1982, the committee has filed or joined as an interested party in 57 antidumping and countervailing duty cases against 18 countries on different pipe and tube products in order to stop the persistent unfair trade practices engaged in by foreign steel producers. In almost 90 percent of the cases filed, we have received affirmative International Trade Commission determinations.

We have been extremely supportive of efforts to close loopholes in the unfair trade laws and address the problems of persistent dumping in certain products and we are active members of TRAC.

Our written statement addresses in depth the areas of trade reform of highest priority to our organization: Diversionary or downstream dumping, statutory guidelines for stopping import surges after cases are filed, and the creation of a private remedy for dumping. In our oral presentation, our objective is to raise the committee's concerns on the enforcement of the laws passed by Congress.

The political cliche most abused by the administration in this era of serious trade problems is "vigorous enforcement of the unfair trade laws." I am here to tell you that the toughness of their rhetoric is not reflected in the reality of their actions.

That is not to say that there have not been significant improvements at the Commerce Department in the last several years. But in some major areas, such as the treatment of nonmarket economies, critical circumstances determinations, the enforcement of the upstream subsidy provision passed by Congress in 1984, and the failure to self-initiate clear subsidy and dumping violations, the Department's policies do not deter exporters and importers from committing unfair trade practices in violation of U.S. laws.

In addition, any attempt to make constructive changes to the laws effecting section 201 cases, or the dumping and countervailing duty laws, including the natural resource subsidy provision and diversionary dumping provisions will be meaningless if the International Trade Commission does not enforce the laws written by Congress.

The Vice Chairman of the Commission, Susan Liebeler, has promulgated her own test for predatory intent in injury determinations. The five-factor test she has established on the issue of causation are very different from those criteria set out by Congress in section 771(7) of the Trade Act of 1979. Few foreign industries are

found to meet this test. In the 10 final determinations published by the International Trade Commission thus far in 1986, Vice Chairman Liebeler has voted negative in all 10.

The newest member of the Commission, Commissioner Brundsale shares most of the Vice Chairman's views and her voting record.

Several of the Commissioners use margins analysis. They take into consideration the amount of weighted average dumping margins or subsidies determined by the Commerce Department and compare them to the amount by which the product under investigation undersells the domestic product. Interestingly enough, as was highlighted by the recent determination in ethyl alcohol from Brazil, these Commissioners only use margins analysis when the margins are small as a reason to make a negative determination, but don't use margins analysis when the margins are large.

It is preposterous to say that where a dumping margin is 10 percent, but the margins of underselling is 20 percent, that the domestic industry does not deserve relief because the relief would not completely remedy the injury being suffered by the domestic industry. Obviously, a partial remedy is preferable to no remedy at all, and the law requires the offsetting of the unfair trade practice. This committee should consider a technical amendment to the Trade Act of 1979 to clarify its intent that the Commission is not to use the size of the margins as one of the criteria for causation in its injury analysis, but it is to assess the volume and impact of the imports subject to investigation.

I hope there is not a mistaken impression on Capitol Hill that previous revisions to the unfair trade laws have been meaningless because the problems of domestic industries continue to worsen. It is our view that the amendments enacted by Congress in 1979 and 1984 were important and meaningful changes. Unfortunately, the administration is far less than vigorous in its enforcement of these laws. This committee, together with the Senate Finance Committee, must play an oversight role to ensure that the laws passed by Congress are vigorously enforced by the Trade Representative, the Department of Commerce, and the International Trade Administration.

Mr. LISON. Mr. Chairman, my name is John Lison. My company, ATCOR, is one of the few remaining profitable producers of steel pipe and tube in the United States. We employ approximately 2,800 people in plants in 5 States, including one, Mr. Jenkins, in Watkinsville, GA, close to your district. We have actively participated in these 57 cases over the past number of years and have financially supported these cases that Mr. Schagrin has told you about.

We have found that pursuing our rights under the trade laws of the United States is not cheap, but that is really only part of the cost, the tip of the iceberg. Our international obligations say that we must both suffer and demonstrate material injury in most cases before a trade investigation is even begun. The injury seems to be the part that gets forgotten often.

It is not the injury to the Treasury or other vital U.S. interests we are talking about here, it is simply injury to our businesses. Once the sale is made by that dumped product, it is gone and it is gone forever.

Our foreign competitors have the luxury of not having to worry about things like product liability and the insurance crisis, minimum wages, fair labor practices, health, safety and the environmental laws and regulations, antitrust laws, budget deficits or paying U.S. taxes, all they really have to worry about is how are they going to sell our customers by whatever means they can get away with. And they have persistently shown that they are pretty clever fellows and they can get away with quite a bit.

They know our laws very well and they use them very well. One of the things that we have seen and we have suffered with is the fact that they have at least 6 months, sometimes up to a year that they can dump their products in our markets before the remedies under the trade laws become effective. They use that time, they use it well. They dump their products and get out of the market. The foreign producer is ahead, the importer is ahead, and we are the lower.

When we get through the whole process, we really have no way to protect ourselves and the trade laws really don't do a complete job. We need your help. We need to sue knowing persistent violators of our laws for damages for the injuries we suffer. All we ask, Mr. Chairman, is the same rights that any injury victim around the world has against us. Let us pursue those who damage us.

Thank you.

[The prepared statement follows:]

TESTIMONY OF ROGER B. SCHAGRIN AND JOHN LISON
ON BEHALF OF THE COMMITTEE ON PIPE AND TUBE IMPORTS
APRIL 11, 1986

INTRODUCTION

Good morning. My name is Roger Schagrin. I am a trade attorney, and I serve as Executive Director and General Counsel of the Committee on Pipe and Tube Imports (CPTI). I am accompanied by Mr. John Lison, Vice President and General Counsel of ATCOR, Inc., who also serves as Vice Chairman of the Committee on Pipe and Tube Imports.

The CPTI is a trade association of domestic producers of steel pipe and tube products. Since 1982, the Committee has filed or joined as an interested party in 57 antidumping and countervailing duty cases against 18 countries in an attempt to stop the persistent unfair trade practices engaged in by foreign steel producers. In almost 90% of the cases filed, we have received affirmative determinations from the Commerce Department, and in approximately 75% of those cases we have received affirmative International Trade Commission (ITC) determinations.

The U.S. pipe and tube industry is fighting to survive in a market that has been deluged by imports that currently account for over 50% of the market. We have been extremely supportive of efforts to close loopholes in unfair trade laws and address the problems of persistent unfair trade practices. As active members of the Steering and Lawyers Committees of the Trade Reform Action Coalition (TRAC), we have played an important role in drafting trade reform legislation over the last several years.

Our statement addresses in depth the areas of trade reform of highest priority to our industry: diversionary or downstream dumping, statutory guidelines for preventing import surges after cases are filed, clarification of the cumulation amendments in the 1984 Act, and the creation of a private remedy for dumping. However, our initial objective is to raise the Committee's concerns about the lack of enforcement of the laws passed by Congress.

THE RHETORIC AND THE REALITY

The political cliche most abused by the Administration in this era of serious trade problems is "vigorous enforcement of the unfair trade laws". The President, the Trade Representative, the Secretary of Commerce and every Administration official charged with enforcing our unfair trade laws are constantly informing U.S. businesses that the Administration is "vigorously enforcing our unfair trade laws". I am here to tell you that the toughness of their rhetoric is not reflected in the reality of their actions. That is not to say that there have not been improvements at the Commerce Department in the last several years. However, in some important areas, such as the treatment of non-market economies, the determinaion of critical circumstances, the enforcement of the upstream subsidy provision passed by Congress in 1984, and the failure to self-initiate clear subsidy and dumping violations, the Department's policies are failing to deter exporters and importers from committing unfair

trade practices in violation of U.S. laws.

1. Treatment of Nonmarket Economies.--When determining the foreign market value in dumping investigations involving nonmarket economies, the Commerce Department must identify countries at similar levels of economic development as the country under investigation for fair value comparison purposes. For instance, in Steel Wire Nails from the People's Republic of China, 51 Fed. Reg. 10247 (March 25, 1986), the Department determined that Egypt, India, Indonesia, Morocco, Pakistan, the Philippines, Sri Lanka, and Thailand were at a stage of economic development comparable to that of the People's Republic of China. The Department found, however, that none of those countries would cooperate in the investigation. The Department instead based foreign market value on the prices of wire nails imported into the United States from Korea, a country that had been found to be dumping steel wire nails into the U.S. That dumping order was revoked pursuant to the steel VRA with Korea. Yet incredibly, the Department declined to use prices of imports from Israel because of the mere possibility raised by a pending countervailing duty case on an unrelated product, that Israeli nails are benefitting from export subsidies. The nonmarket economy provisions of the law are clearly not providing effective relief to domestic industries as they are currently written and enforced. We support the nonmarket economy provisions in Section 701 of S. 1860 and believe the Department should embrace them as well.

2. Critical Circumstances.--When making a critical circumstances determination in a dumping investigation, the Department determines whether there have been massive imports over a short period of time, and whether there has been a history of dumping or the importer knew or should have known that the merchandise was being dumped. In the preliminary dumping determination in Certain Welded Carbon Steel Pipes and Tubes From Turkey, 51 Fed. Reg. 235 (January 3, 1986), the Department noted that imports of pipe from Turkey had surged between the period before the filing of the petition and the preliminary determination, but "considering the absolute quantities imported," the Department found that imports had not been massive. Prior to this case, the Department decided whether imports were massive by considering only the volume of imports relative to previous volumes, without considering those imports' share of the market compared to other countries' shares. This change in the Department's policy has been to the detriment of domestic industries, making it much more difficult to obtain an affirmative determination of critical circumstances.

The Department's policy has been to determine whether an importer knew that the merchandise was being dumped by considering the size of the dumping margin. If the margin exceeds 25%, the importer is presumed to know that the merchandise was being dumped. If the margin is less than 25%, the importer is presumed not to know. In Circular Welded Carbon Steel Pipes and Tubes From

Thailand, 51 Fed. Reg. 3384 (January 27, 1986), as petitioners, we complained that this criteria is arbitrary and urged the Department to use more flexible and reasonable criteria, such as considering whether the U.S. prices are similar to prices from other countries that had already been found to be dumping. The Department responded: "Short-hand formulas for imputing knowledge of dumping such as those suggested by petitioners run the risk of arbitrarily penalizing importers who believe in good faith that their imports are not being dumped." The size of the dumping margin is a less certain guide to knowledge of dumping than is a comparison of U.S. prices. Contrary to its statement, the Department seems to have chosen the most "short-handed formula" possible for imputing knowledge of dumping.

3. Upstream Subsidies.--In upstream subsidy investigations, section 771A requires the Department to determine whether (1) an input subsidy (2) bestows a competitive benefit on the merchandise under investigation and (3) has a significant effect on the cost of producing that merchandise. A "competitive benefit" results when the price of the subsidized input is lower than the price that the company would otherwise pay for the input from another seller in an arm's length transaction.

In Certain Agricultural Tillage Tools From Brazil, 50 Fed. Reg. 34525 (1985), the first investigation in which an upstream subsidy allegation was taken to a final determination, the Department improperly combined the second and third elements of the

input subsidy test to determine whether the input subsidy has a "significant effect on the competitiveness" of the products under investigation. Thus, it noted that the input subsidy was 1.14%, but that prices of Brazilian tillage tools in the United States were 30% to 50% below domestic prices. "Given the magnitude of the cited price differentials, we conclude that a subsidy to input producers that accounts for 1.14 percent of the cost of producing tillage tools does not have a significant effect on the competitiveness of the Brazilian tillage tools." The second prong of the test requires a comparison of the price of the subsidized input with the price of an unsubsidized input. The third prong of the test is of whether the lower price for the subsidized input significantly lowers the cost of production. The statute nowhere calls for the Department to analyze whether the size of the input subsidy was the reason that the finished goods were able to sell in the United States.

4. Failure to Self-Initiate

In 1984, Congress passed Section 609 of the Trade Act of 1984, which amended Section 732a to ensure that in product areas such as pipe and tube, the Commerce Department would monitor so-called "new supplier countries" and would self-initiate cases. However, not withstanding this law, the Commerce Department has not self-initiated any unfair trade cases of persistently dumped steel products. Therefore, the domestic industry must spend the legal fees to prosecute these unfair trade cases, and we must suffer the injury caused by the tonnages that are brought in prior to the

imposition of remedial countervailing and antidumping duties. Since section 609 was passed the CPTI has brought seven additional antidumping cases on standard pipe in addition to the two existing orders. Lone Star Steel Company has filed a number of dumping cases on oil country tubular goods and the wire rod producers have also filed additional cases. The only antidumping case which the Department has self-initiated has been in the semiconductor area. We applaud the Department's decision to self-initiate that case but believe that the Department also has a responsibility to self-initiate cases in other product areas where there is clear evidence of persistent dumping of the same class or kind of merchandise.

ITC ENFORCEMENT ISSUES

Any attempt to make constructive changes to our unfair trade laws will be meaningless if the International Trade Commission does not enforce the laws written by Congress.

In Section 771(7) of the Trade Agreements Act of 1979, Congress provided specific factors for the ITC to consider when it determines whether a domestic industry is being injured by reason of unfairly traded imports. The Vice Chairman of the Commission, Susan Liebeler, has promulgated and based injury determinations on her own five factors test on the issue of whether the domestic industry is being injured by reason of the unfairly traded imports: 1) a large

increase in market share; 2) a high margin of dumping or subsidization; 3) homogeneous products; 4) declining domestic prices; and 5) barriers to entry to other foreign producers. These criteria are very different from those set out by Congress. In support of her causation test, Commissioner Liebeler has made the following statements:

> Price discrimination can take several forms. The fact that Congress referred to unfair price discrimination suggests to believe that Congress meant some type of predatory pricing. Predatory pricing is a form of strategic behavior in which a firm lowers the price of its product below the marginal cost of production. Such behavior is only rational if the firm expects to be able to raise its prices in the future to a level at which it can more than recoup the losses it suffers in the present. Thus, predatory pricing can only be practiced by firms that have or expect to have market power.
>
> Ideally, the Commission would develop data on the cost of production of the foreign firms accused of dumping. Unfortunately, cost data is difficult to develop, even in domestic cases. In the absence of such information, the Commission must look to relevant proxies. I believe that market share and pricing trends are the appropriate subjects for examination. Although this information is not dispositive of the predation issue, large and growing market share and deteriorating price trends are necessary conditions for a predatory behavior.

Certain Red Raspberries From Canada, USITC Publication 1707 (June, 1985).

Few foreign industries are found to meet Vice Chairman Liebeler's test of predatory intent. Vice Chairman Liebeler

has voted negative in all ten final determinations published by the ITC thus far in 1986. Unfortunately, the newest Commissioner, Anne Brunsdale, appears to have embraced many of the same principles espoused by Vice Chairman Liebeler. In all of her votes since becoming a Commissioner, she has cast only one affirmative vote in a final determination.

Several of the Commissioners do not believe that "price undercutting," one of the principal statutory injury criteria provided by Congress in section 771(7)(C)(ii)(I) is relevant, and they ignore evidence of underselling collected by the Commission staff. For example, in Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes From Canada, Inv. No. 731-TA-254, USITC Pub. 1808 (February 1986), at 11 n.25, the Commission said:

> Vice Chairman Liebeler and Commissioner Brunsdale believe that evidence of underselling is ordinarily not probative on the issue of causation. They do not find the particular data on underselling gathered by the Commission useful. Chairwoman Stern believes that evidence of underselling should be used only with caution.
>
> In this case, we note that the relevant products are not usually the same (i.e. homogeneous) for different suppliers. Hence prices received by different suppliers are expected to vary and price differences observed among firms can persist over time. Thus, the observed price differences among firms are not helpful in analyzing causation.

In other words, since different suppliers would always sell for the same price if their products are exactly the same,

if the prices are different it can only be because the products are somehow different. Because these commissioners cannot seem to imagine a situation in which a supplier would deliberately try to sell an identical product for a lower price in order to make a sale unless there is predatory intent, they ignore one of the two principal causation criteria and are therefore not likely to reach an affirmative injury determination.

Finally, several of the Commissioners use margins analysis, i.e., they compare the amount of weighted average dumping margins or subsidies determined by the Commerce Department to the amount of underselling. Interestingly enough, as was highlighted by the determination in Certain Ethyl Alcohol from Brazil, these Commissioners only use margins analysis when the margins are small as a reason to make a negative determination, but don't use margins analysis when the margins are large.

> Furthermore, we note that we have previously considered, as one factor among many, the subsidy or dumping margins in our analysis of title VII cases. In the present case, Commerce has determined that the dumping margin was 98.81 percent and that the subsidy margin was 2.6 percent. But the margins themselves have no signficiance unless their context in each particular case is examined. Under the conditions just outlined, the size of the margins affects the quantity of imports but does not have a significant effect on the domestic price or production. Thus, in this case, the size of the margins does not shed any additional light on whether imports are a cause of material injury to the domestic industry.

Certain Ethyl Alcohol from Brazil, USITC Publication 1818 (March, 1986).

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The statutory language that the Commissioners should use to determine whether there is injury by reason of the imports subject to investigation, as well as the legislative history of the Trade Agreements Act demonstrates that Congress did not intend for the Commission to weigh the margins in their determinations. It is preposterous to say that where a dumping margin is 10%, but the margin of underselling is 20%, that the domestic industry does not deserve relief because the relief would not completely remedy the injury being suffered by the domestic industry. Obviously, a partial remedy is preferable to no remedy at all. We request that this Committee add a technical amendment to the Trade Act of 1979 to clarify its intent that the Commission is not to use the size of the margins as one of the criteria for causation in its injury analysis, but it is to assess the volume and impact of the imports subject to investigation.

We believe that every counsel for a domestic industry would agree that there is a tremendous crisis occurring presently at the ITC. The standards for determination of material injury being used by this Commission are so much higher than the standards set by Congress that one's chances of prevailing in a final determination, no matter the facts supporting a finding under the statutory criteria, are becoming slimmer.

I have raised these issues concerning the Commerce Department and the International Trade Commission to alert

this Committee to the fact that despite the rhetoric of the Administration, the trade laws as written by Congress are not being vigorously enforced. Congress has charged the Department and the ITC with protecting our domestic industries from the unfair trade practices of our trading partners. The Congress must renew this sense of purpose in the Department and the ITC. The laws must be enforced as written by Congress. Where additional problems exist that are not effectively addressed by existing legislation, Congress should legislate to fill these gaps. TRAC has identified some of the most important issues which we believe Congress should address. My remaining comments concern these issues.

TRAC AMENDMENTS

1. Diversionary Dumping.--Often a U.S. industry will successfully prosecute a dumping action and see a reduction of imports from that country, only to find that the industry's customers begin to be ravaged by imports of goods manufactured from inputs that are the subject of dumping findings. A dumping action brought against those finished goods will not produce satisfactory results, because the finished goods producers are not selling below their cost of production. Instead, they are buying their inputs at dumped prices, and are

thus able to gain market share in the U.S. with very low-priced finished goods.

The proposed TRAC legislation will allow U.S. industries to counter this practice through the antidumping laws. The law would reach only those inputs that are subject to dumping orders or an export arrangement, and would adjust the foreign market value of the finished product by the amount by which the input is sold to the foreign producer at less than fair value. This proposed legislation was revised from the language TRAC supported in 1984 to take into account the Administration's concern about the proposal. This legislation requires a previous finding that the inputs were being dumped. It would be easily administered and would not add significantly to the administrative burden of enforcing our unfair trade laws.

2. Critical Circumstances.--The whole purpose of the antidumping and countervailing duty laws is to have additional duties assessed on imports to offset unfair trade practices. Obviously, the sooner those duties are assessed, the sooner the domestic industry will obtain relief from the unfair trade practices. However, no duties may be assessed until the Commerce Department makes a preliminary determination of dumping or subsidization. It normally takes three to five months after the filing of a petition for the Department to make a preliminary determination. Naturally, importers, knowing that they have three to five months before duties can

be assessed, will often try to import as much as possible before the preliminary determination. The present law has provisions for the retroactive assessment of duties 90 days before the preliminary determination, but this rarely happens in practice.

The proposed TRAC legislation would change the procedure so that the petitioner would no longer be required to make an allegation of critical circumstances. Instead, the Department will immediately begin monitoring imports once an investigation is initiated, and will publish a notice if it finds that imports have surged. If it publishes such a notice, the Department will automatically make a critical circumstances determination, which, if the determination is affirmative, will retroactively assess duties 90 days before the preliminary determination. Our proposed legislation will also provide guidelines for the Commerce Department when making a determination of whether the importer knew or should have known that he was importing dumped merchandise. It will also eliminate the requirement that the International Trade Commission make a separate critical circumstances determination.

3. Cumulation.--Often a domestic industry finds itself hammered by imports of merchandise from a number of different countries at once. The Trade and Tariff Act of 1984 included a provision that required the International Trade Commission to "cumulate" imports from those countries when considering

whether the domestic industry was being injured by reason of those imports. Since that Act went into effect, the Commission has construed that provision as narrowly as possible, and has failed to cumulate in many situations contrary to Congressional intent.

The proposed TRAC legislation clarifies the language of the Trade and Tariff Act of 1984 so that it would specify that dumped imports are to be cumulated with subsidized imports; imports from various countries would be cumulated without regard to the geographic locations of the imports into the United States; imports from countries not entitled to injury determinations would be cumulated with imports from countries that are entitled to such determinations; and imports from countries subject to investigation would be cumulated with imports that were subject to investigation in the past year (and resulted in a dumping/subsidy order, a suspension agreement, or the withdrawal of the petition pursuant to a quantitative restraint agreement).

4. Private Damages Remedy for Dumping.--The dumping laws provide no relief for injury that occurred prior to the imposition of dumping duties.

Since 1982, the CPTI has filed a number of successful cases. These include dumping duties ranging from 9.7%-43% against imports from Taiwan, preliminary dumping duties of 49% and 28% against Spain and Venezuela (before those cases were

withdrawn pursuant to VRAs) 17.8% countervailing duties against imports from Turkey, and 15.8% dumping duties against imports from Thailand, to name just a few. However, in almost every one of these cases, between 50,000-100,000 tons of unfairly traded products entered the country prior to the imposition of the additional duties. The reason for this is that importers bring in as much tonnage as possible prior to a preliminary determination.

The prospective nature of the dumping laws encourages importers to switch from one source of unfairly traded merchandise to another as dumping actions are brought, knowing that they will never really be required to pay substantial dumping duties. Foreign producers also switch to dumping related products that they can make in the same production facilitites. The dumping laws do not provide damages directly to the domestic industry. The 1916 Antidumping Act, although theoretically providing such damages, has never been used successfully, mainly due to the difficulty of proving specific intent to injure the domestic industry.

It is proposed to amend the 1916 Act to provide damages directly to domestic industries suffering material injury by reason of dumped imports, but without the requirement for proving specific intent to injure the domestic industry. The action would be before a federal court, and would provide for damages plus costs (including reasonable attorneys fees) if

the domestic producer shows that he was injured by reason of dumped imports. This legislation would deter foreign producers and importers from engaging in these dumping practices.

CONCLUSION

On behalf of the CPTI and all domestic manufacturers trying to obtain relief from unfair trade practices committed by foreign governments and foreign producers, I urge the Committee to carefully study the proposals to close some of the loopholes in the antidumping and countervailing duty laws proposed by the Trade Reform Action Coalition. In addition, I urge you to take a personal interest as well as a Committee-wide interest in ensuring that those laws passed by Congress are vigorously enforced by the Trade Representative, the Department of Commerce, and the International Trade Commission.

Mr. JENKINS. Thank you very much, Mr. Lison, and thank you for your very good statement, Mr. Schagrin.

We will now hear from Ronald Gerson of Louis M. Gerson Co., accompanied by Sidney N. Weiss.

STATEMENT OF RONALD GERSON, PRESIDENT, LOUIS M. GERSON CO., INC., ACCOMPANIED BY SIDNEY N. WEISS, COUNSEL

Mr. GERSON. Thank you, Mr. Chairman, members of the committee, for the opportunity to appear before you.

The Gerson Co. employs about 250 people. We have three facilities located in Massachusetts and Tennessee. Our annual sales are in the $15 to $20 million range. We produce a variety of disposable products sold into the automotive industry, and medical and consumer markets. These products include paper and textile based paint filters, chemically treated textile based cleaning cloths, surgical face masks, NIOSH approved face masks for use with toxic dust in industry and dust masks for general consumer use.

We sell both in the United States and abroad. In fact, exports are an important part of our business, therefore, we support free and fair trade. In many of our products we have major market shares. This is due to our status as a world class manufacturer. We believe that we have the most efficient manufacturing techniques for many of our products as a result of heavy capital investment and considerable research and development.

I ask this committee and Congress to listen to certain proposed changes to ensure both free and fair trade:

First, we support a free trade area agreement with Canada. As I mentioned, export sales both to Canada and the EEC are significant portions of our business. We want to see these markets protected and expanded. Despite the fact that we have competitors in Canada who may more easily be able to sell in our markets in the United States, the free trade area would demonstrate that American industry, at least as far as our business is concerned, can compete effectively and profitably in world markets when trade rules are both free and fair. We believe that a free trade area will increase our business and will be good for the economy as a whole.

Second, we ask that remedies be taken to assure that the U.S. Customs Service can enforce existing and current trade laws. While we are the most efficient manufacturer in the world for many of our products, and we will profit by free trade, we absolutely cannot compete either at home or abroad with unfairly traded imports.

Unfairly traded imports simply destroy business. The most glaring example of this that we have personally experienced is in the market for our paper and textile paint strainers which 2 years ago started coming into the United States from Brazil. These imports came in in violation of existing U.S. trade laws. They were in violation of trade laws in several important aspects:

The goods, first, were not properly marked with country of origin.

Second, they were not properly classified.

Very importantly, component materials manufacturing costs and export subsidies existed and continue to exist for these products. As a result our market share has seriously eroded both in the United

States and abroad due to the Brazilian entrance which violated our trade laws.

Laws already exist to end these illegal practices. At the time that these products started coming into the country, we advised Customs of these violations. Initially Customs was successful in preventing entry of these products in violation of the laws. After a few months, however, the importers were able to obtain so-called one-time exceptions and the importers were able to find ports that were not as efficient in enforcing the trade laws as other ports.

When we brought this to the attention of the Customs officials, they explained that unfortunately, they simply didn't have the resources to enforce either all of the existing laws or their own determinations. In short, without ensuring that Customs has the resources to enforce existing laws, further changes will only be cosmetic.

A third area that we would like to comment on proposed changes to the countervailing duties laws, to remedy injury to U.S. manufacturers resulting from subsidized exports to third countries. When a U.S. manufacturer such as us, who has plants only in the United States, competes with subsidized exports to third countries, there is very little we can do to remedy the situation. We must try to equalize the unfair advantage of some subsidized and dumped goods consistent with GATT.

We believe that we have developed such a method to use where U.S. manufacturers are injured from subsidized and dumped goods into third countries. In the simplest form, what we propose is to account for all subsidization in the United States and abroad as is currently done. But the resulting U.S. countervailing duty under our proposal would seek to capture all export subsidies, whether or not all the subsidized exports reach the United States. In this way, a country's exports subsidy practices would be countervailed in a precise manner in the United States. We would then in effect be playing on a level field. No GATT principle would be violated, free trade would be preserved, no State sovereignty would be infringed, and we would be able to compete on a fair basis both at home and abroad.

In short, we compete in many foreign countries against lower wages, against subsidized goods, and even against additional disadvantages of tariffs being assessed against United States goods where none are assessed against the goods of our exporters. We must level the playing field. Given a chance, we feel that we can win our share of the encounters.

Thank you very much.

[The prepared statement follows:]

TESTIMONY

OF

RONALD GERSON
PRESIDENT

LOUIS M. GERSON CO., INC.
15 SPROAT STREET
MIDDLEBORO, MASSACHUSETTS 02346

My name is Ronald Gerson. I am President and Chief Executive Officer of the Louis M. Gerson Co., Inc. of Middleboro, Massachusetts. Our company was established in 1946, and currently employs approximately 250 people at 3 locations in Massachusetts and Tennessee.

The Louis M. Gerson Company manufactures a wide variety of products for the painting and construction industries. We manufacture paint strainers, paint paddles, NIOSH approved face masks, nuisance masks, chemically impregnated cleaning cloths for the automobile industry and other associated products. Our annual sales are approximately $15-20 million per year.

We have the predominant market share for many of our product lines. We sell both domestically and abroad. Exports have been an important portion of our business for many years and we, therefore, support free and fair trade. This is especially important to us because we believe that in many of our product lines - paper and textile strainers, for example, we lead the world in the most efficient production techniques. This is the result of heavy capital investment in our production facilities and research and development.

I am testifying today on behalf of the Louis M. Gerson Company to ask this Committee and Congress for certain changes in our trade laws which would insure both free and fair trade.

1. SUPPORT FOR A FREE TRADE AREA AGREEMENT WITH CANADA

First, as I mentioned above, a significant portion of our sales are generated by exports. Most of our exports are to Canada and the European Economic Community. We, naturally, want to see

these markets protected and expanded. Therefore, we support the administration's request for negotiating authority for a Free Trade Area (FTA) with Canada. Despite the fact that we have competitors in Canada who may more easily be able to sell in our markets in this country, we believe that a Free Trade Area with Canada will demonstrate, insofar as our business is concerned, that American industry is able to compete effectively and profitable in world markets when the trade rules are both free and fair. We believe that the FTA with Canada will increase our business and this will be good for the economy as a whole.

2. THE CUSTOMS SERVICE MUST ENFORCE CURRENT TRADE LAWS

While we are the most efficient manufacturer in the world of certain of our products, and we will profit by free trade, we cannot compete, abroad or at home, with unfairly traded imports.

Such unfairly traded imports simply destroy our business. The most glaring example of this is our experience with the importation of paper and textile strainers from Brazil.

Our company is the innovator in this product line. Our production techniques, as I indicated earlier, are the most efficient of any in the world. Approximately two years ago, Brazilian paper and textile strainers began entering the United States. These Brazilian strainers were unfairly traded in several respects: 1) they were not properly marked with country of origin; 2) they were not properly classified; and 3) the manufacture and exportation of the product from Brazil, including its component materials, were - and are being - subsidized by the Brazilian government.

As a result, our market share for our company's product has significantly eroded. Furthermore, the erosion of our market share occurred both in this country and in Europe. In each case this was at the expense of the subsidized Brazilian entrant who was violating trade laws in other respects as well.

In many respects, we already have laws which should stop these illegal practices. For example, the U.S. Customs Service has determined that the strainers from Brazil are not properly marked with country of origin. This information was given to all appropriate officials around the country.

When this merchandise entered the country, after Customs had determined that the merchandise was improperly marked, Customs would not permit entry. However, after a few months, the importer was able to target certain ports of entry and either gain one-time exemptions to the marking laws, or enter the merchandise at ports at which Customs enforcement was not efficient, although it had known for months that is was violating U.S. Customs laws. When we confronted Customs with this information, they replied that it did not have sufficient resources to enforce its own orders.

We, therefore, urge this Committee to ensure that the Customs Service has enough resources to enforce our country's laws and the Customs Service's own determinations on the legality of imports into the United States. Absent this most fundamental action by Congress, the changes in our trade laws will only have a cosmetic effect. Certainly, American industry will not obtain any real protection against unfairly traded imports into the United States.

3. PROPOSED CHANGES TO THE COUNTERVAILING DUTY LAWS TO REMEDY INJURY TO UNITED STATES EXPORTS AS A RESULT OF SUBSIDIZED EXPORTS TO THIRD COUNTRIES

Finally, we want to propose a modification in our dumping and countervailing duty laws which would enable American industry to obtain more appropriate relief for the injury it suffers when a foreign industry subsidizes or dumps its exports. As you are aware, under current law, an injured U.S. industry may obtain relief if an import is being sold in the U.S. at either subsidized prices or at less than fair value. A countervailing or dumping duty is then imposed on the import equal to the amount of the subsidy or dumping margin.

However, when a foreign manufacturer is dumping or selling subsidized merchandise in both the United States and third country markets and a United States industry is injured, the United States industry can never equalize the loss as a result of the dumping or subsidy margins.

First, the U.S. industry is unlikely to have standing to bring a countervailing duty or antidumping complaint in third country markets, even if those countries do have countervailing duty and antidumping laws (which most countries do not have).

Second, as a result of the dumped or subsidized sales to third country markets, the U.S. industry is bound to lose sales abroad even if it can get a dumping or countervailing duty order at home. This amounts to an irreparable injury to U.S. industry and a permanent exclusion from world markets which can never be overcome. Furthermore, retaliation against non-related products from the exporting country under §301 does not assist the injured U.S. industry.

The only was to remedy the situation is to equalize the unfair advantage of dumping or subsidization in a way this is consistent with GATT. We believe that we have developed such a method, at least insofar as subsidization is concerned. If a foreign product is subsidized, and, as a result, a U.S. industry is, or is likely to be, materially injured under current U.S. law (including as a result of lost export opportunities), then the Department of Commerce should use a new methodology in determining the amount of the countervailing duty.

That methodology should take into account all subsidization on products exported to the United States as well as third countries, as it does under current law. But the resulting U.S. countervailing duty should seek to capture all of the export (but not manufacturing) subsidies. Such a countervailing duty should

be reduced by an amount equivalent to countervailing duties imposed on that product by third countries when applicable. As a result, a country's export subsidy practices will be countervailed in a precise manner when entry is made into the United States. A U.S. manufacturer will then be playing on a level field whether it sells in the United States or to third country markets. Moreover, if the exporter continues to sell in third country markets, those countries continue to have the choice of receiving lower priced subsidized products or imposing a countervailing duty to protect their own industry.

No GATT rule would be violated, the principles of free trade will be preserved, and no country's sovereignty would be infringed and the United States industry would be able to compete on a fair basis in its own market as well as abroad.

Such a change would remedy to the greatest degree possible the unfair disadvantages faced by an efficient U.S. industry, which is being injured by subsidized exports in the U.S. and to third countries.

I thank the members of the Committee for your time and consideration.

Mr. JENKINS. Thank you very much for your testimony, Mr. Gerson.

We will now hear from Phil Ola, of the Cold Finished Steel Bar Institute and Murray J. Belman, counsel.

STATEMENTS OF PHILIP OLA, VICE PRESIDENT, STEEL SERVICE CENTER INSTITUTE, AND MURRAY J. BELMAN, COUNSEL, COLD FINISHED STEEL BAR INSTITUTE

Mr. OLA. Thank you, Mr. Chairman, for this opportunity to present legislative proposals relating to the antidumping and countervailing duty laws. My name is Philip Ola, and I am the vice president for governmental affairs of the Steel Service Center Institute. With me today is Murray Belman, of Thompson & Mitchell, counsel to the Cold Finished Steel Bar Institute.

Today, I shall describe the serious problem of diversion that has developed in steel trade and its effects on American industry in general, and the metal industries in the specific. Mr. Belman will outline the proposals that we believe are critically necessary to deal with this problem.

The Steel Service Center Institute includes some 400 service center member companies operating over 1,000 branch locations across the country. Metal service centers are the largest single customer group of domestic steel producers. In 1985, 31 percent of all domestically produced, carbon industrial steel products was marketed through service centers.

Steel Service Center Institute has strongly endorsed the President's steel program of September 1984. Further, the Steel Service Center Institute has vigorously supported efforts to reform our trade laws with the objective of making them reflect the realities of the international marketplace of the 1980's. We believe that it is essential to include key dumping and subsidy law changes in an omnibus trade bill. Of particular concern to our institute is the problem of diversion.

Diversion occurs when dumped or subsidized products are used as raw materials or components in so-called downstream products. Two of these practices are diversionary dumping and upstream subsidies. Existing law does not now deal adequately with these practices.

Presently, a great deal of steel imported into this country is subject to quantitative limitations or duties imposed to offset unfair trade practices. Faced with this situation, foreign producers have every economic incentive to move downstream. They avoid restraints on their products by transforming them into other products that may be beyond the coverage of existing quotas or orders.

Examples of these practices can be found in the growing campaign by foreign producers to get U.S. screw machine and cold heading product manufacturers to move offshore, in the diversion by EC steelmakers from exports of hot rolled bar to cold finished bar, and in the efforts to set up a pipe production facility in Panama that would use Brazilian sheet.

Other such cases involved structural steel, plied acrylic yarn, and a host of other products. The clear objective of these activities is to

avoid restraints on unfair trade of their countries' express undertakings to limit exports to the United States.

We are in the process of developing measurements of the impact of diversion to downstream products. In many cases, our tariff classifications do not include a specific breakout for downstream articles. Nonetheless, some measurements have been made, and the conclusions are fairly clear:

One, it appears that the downstream products phenomenon is a principal cause of lower shipments by domestic steel producers. A recent study estimated that we had an unfavorable shift of 9.4 million tons of indirect trade in steel containing products between 1977 and 1985. As a result, while total steel usage in 1985 was about the same as in 1977, the available market for domestic producers declined from 108.5 million tons to 97 million tons, a drop of 11 percent.

Two, some downstream industries have begun to quantify increased imports of competing products. Thus, it is estimated that market penetration by screw machine product imports increased from 7.9 percent in 1979 to 11.4 percent in 1985. The International Trade Commission concluded that import penetration in nine forging categories increased from 15.6 percent in 1981 to 27.2 percent in 1985.

The tooling and machining sector has witnessed erosion directly proportional to the decline in the United States manufacturing base.

Finally, the International Trade Commission found that the average level of ball and roller bearing imports imported directly and as downstream products increased from 22 percent in 1978–1983 to 28 percent in 1984–85.

We do not contend that all the increases in imports of steel containing products are due to diversion, but the evidence is clear that diversion is a serious problem and that the incentives for its expansion are growing in steel and many other industries.

For these reasons, we respectfully ask the committee to consider our proposals to meet the diversion problem.

Thank you.

Mr. JENKINS. Thank you very much, Mr. Ola.

Mr. Belman.

Mr. BELMAN. Thank you, Mr. Chairman.

My name is Murray Belman. I am a member of Thompson and Mitchell, counsel to the Cold Finished Steel Bar Institute.

Our proposals to deal with the problem of diversion are, we believe, fair and measured. They are not protectionist, since they do not seek to limit fairly traded imports. They are carefully designed to make them administrable by government agencies. Our suggestions deal with four areas:

First, we recommend that a new section be adopted to make diversionary dumping an actionable unfair trade practice. Under present law, United States industries may not object to imports of products containing dumped raw materials or components. Our proposal would require that, in any dumping investigation of a finished product, the fair value of a dumped input be factored into the determination whether that finished product is fairly priced in the United States.

Legislation dealing with diversionary dumping was adopted by both Houses of Congress in 1984, but it was deleted in conference because the administration contended that it would be too difficult to administer. Our present proposal deals with the administrability issue by limiting its effect to inputs that are already subject to outstanding dumping orders or are covered by intergovernmental restraint arrangements. If a dumping order on a raw material or component is in effect, the foreign market value determined in the prior proceeding will be applied in determining the existence of diversionary dumping.

Because the provision would only apply to inputs subject to an arrangement or after a finding has been made that the input was injuriously dumped in the United States, foreign downstream producers will be on notice and have the opportunity to adjust their prices to offset the unfair advantage they might otherwise enjoy in the United States market.

Second, our second proposal would give standing to United States industries to challenge the evasion of our trade laws that occurs when dumped and subsidized competitive products are imported as components of other products. Dumping and subsidization have been considered to be unfair international trade practices since the GATT was adopted in 1948. The unfairness of those practices does not disappear when the beneficiary product is further processed. Instead, the unfair benefits simply assist a second foreign industry.

Our proposal would permit American makers of like products to institute appropriate actions under our unfair trade practice laws. There is no provision of the GATT itself that this proposal would contravene. If there are questions under the GATT subsidies or antidumping codes, amendments to those codes should be negotiated.

Third, our third proposal would establish clearer statutory guidelines on upstream subsidy investigations. Under most situations, on upstream subsidy is actionable under our trade laws only if it is provided by the government of the country in which the end product is made. One exception to that general rule was incorporated in the 1984 act to include subsidies paid by a customs union to producers in a member country. We believe that that provision should be expanded to take account of the realities of trade within a customs union.

By definition, products of one member country of a customs union are treated as domestic products of other member countries. Consequently, it makes no economic sense to distinguish between subsidies paid by the country in which an end product is made and those paid by another member country.

Fourth, our final proposal is aimed at the diversion that is likely to be caused by the imposition of large dumping or countervailing duties. In such cases, we believe that it is reasonable to ask administering authorities to be alert for the possibility of diversion.

Our proposal would require the Commerce Department to monitor increases in imports of downstream products that are likely to be vehicles for diversion. Where large antidumping or countervailing duties are imposed or recommended, U.S. producers would be asked to identify to the Commerce Department downstream prod-

ucts in which the dumped or subsidized product is likely to be used as a raw material.

In the event imports of those intermediate or end products from a foreign country increase by more than 10 percent in any 6-month period, the Commerce Department would be required to investigate whether dumping or subsidization is occurring, either directly or by virtue of the dumped or subsidized components.

Our proposal is similar to actions that have already been taken by the Department of Commerce to counter a major threat to the President's steel program. Both our proposal and the Commerce Department approach create a monitoring program to assure that diversion does not undercut our trade laws and related programs.

While our suggestion is tied to investigations under the dumping or countervailing duty laws, it could easily be expanded to encompass action under section 301. The proposal could also be said to deal with diversion to evade limitations under voluntary arrangements. We believe that the modalities are not as important as the clear expression of Government policy to be on the lookout for diversion and to deal with it promptly if it occurs.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF PHILIP OLA AND MURRAY J. BELMAN
TO THE SUBCOMMITTEE ON TRADE,
HOUSE COMMITTEE ON WAYS AND MEANS
APRIL 11, 1986

STATEMENT BY MR. OLA:

Thank you Mr. Chairman for this opportunity to appear before the Subcommittee to discuss legislative proposals relating to the antidumping and countervailing duty laws. My name is Philip Ola, and I am the Vice President for Governmental Affairs of the Steel Service Center Institute. With me today is Murray Belman, of Thompson & Mitchell, counsel to the Cold Finished Steel Bar Institute.

Today, we should like to describe to you the serious problem of diversion that has developed in steel trade during recent years. We believe that, left unchecked, unfair diversion could seriously undermine the President's steel program and the many companies making, processing and selling steel products. I shall give you a description of how diversion works and its effects on American industry, in general, and the metal industries in the specific. Mr. Belman will outline the proposals that we believe are critically necessary to deal with this problem.

Let me begin by describing our perspective on this problem. The Steel Service Center Institute includes some 400 service center member companies operating over 1000 branch

locations across the country. Metal service centers are the largest single customer group of domestic steel producers and serve the metal supply needs of more than 300,000 manufacturers and fabricators through thousands of outlets nationwide. In 1985, 31% of all domestically produced, carbon industrial steel products was marketed through service centers. Accordingly, steel service centers have a vested interest in a healthy, quality-oriented, world class steel industry.

SSCI endorses efforts to ensure the long-term health of the domestic steel community so that low cost, high quality steel can be provided to the end users. In the recent past, unfairly traded steel imports have contributed to serious injury in the domestic steel industry resulting in significant idling of production facilities, a decline in profits and substantial unemployment. SSCI has supported efforts by the domestic producers to seek relief from unfairly traded steel imports through the antidumping and countervailing duty statutes of our trade laws. We have also supported the President's program of September 1984, which was aimed at permitting the American industry to become more competitive by assuring that they will operate on a level playing field, at least in our domestic market.

Further, the SSCI has vigorously supported efforts to reform our trade laws with the objective of making them reflect the realities of the international marketplace of the

1980's. Our chief objectives in this effort have been to make the trade laws less complex and more expeditious for all petitioners. The process should also be less expensive, less arbitrary, more certain, more fair and more effective.

Many of these objectives were secured by the passage of the Trade and Tariff Act of 1984. However, we believe that more needs to be done, especially by assuring that our laws aimed at unfair trade practices can fully cope with today's commercial realities.

The SSCI supports the growing bipartisan consensus in both houses of Congress that omnibus trade legislation, including the strengthening of U.S. trade laws, should be enacted in 1986. Since there are many flaws in Sections 201 (injury) and 301 (unfair trade practices) of the Trade Act of 1974, the SSCI supports the ongoing Congressional efforts to reform these laws. We believe, however, that it is equally essential to include key dumping and subsidy law changes if the truly comprehensive trade law reforms/omnibus trade bill is to be enacted. Of particular concern to our Institute is the problem of diversion.

Diversion -- The Downstream Products Issue

Diversion occurs when dumped or subsidized products are used as raw materials or components in so-called "downstream" products. Two areas of primary concern to us relate to "diversionary dumping" and "upstream subsidies." In both of these cases, products enter the United States

containing dumped or subsidized components. As Mr. Belman will describe more fully, present law does not now deal adequately with these practices. Let me describe why they are a serious problem for America's steel service centers as well as our customers and suppliers.

Over the last four years, literally hundreds of antidumping and countervailing duty actions were brought against steel imports. A good share of these actions were successful and resulted in the imposition of additional duties on steel imports. Since the President's program went into effect in late 1984, most of the principal foreign suppliers have agreed to restrain their exports of a broad variety of steel products. While those agreements superseded countervailing duty or antidumping orders then in effect on covered products, a number of other orders remain operative. The net result is that a great deal of steel imported into this country is subject to quantitative limitations or penalty duties imposed to offset unfair trade practices.

Faced with this situation, foreign producers have every economic incentive to "move downstream." That is, they are actively seeking to avoid restraints on their products by transforming them into other products that may be beyond the coverage of existing quotas or orders. Let me give you some examples of how this process has worked:

1. My first example relates to American screw machine products and cold heading industries. These

manufacturers take steel mill products and produce a variety of cogs, gears, and other "widget"-type articles that are used as components of other products. In recent years, there has been a growing campaign by foreign producers urging U.S. manufacturers to move offshore. Let me read you an excerpt from one such sales pitch:

> Due to the difference of labor costs between yours and ours, we believe it pays for you to entrust us with the manufacturing of some of the items which require relatively more processings and, if made by yourselves, are not so profitable or are facing keen competition from U.S. manufacturers or from the importers.

In other words, "close your plant and let us make your product abroad."

2. In 1982, American steel producers brought countervailing duty actions against a broad number of steel products exported by the European Community. Among those products was cold finished steel bar, which is made from hot rolled bar. The Commerce Department concluded that hot rolled bar production in most of the Community countries was subsidized; however, they refused to consider those subsidies in evaluating the downstream product, cold finished bar. As a result, a negative finding was made on cold finished bar.

In late 1982, the EC entered into a voluntary restraint agreement, thereby settling all outstanding countervailing duty cases. Hot rolled bar was given a specific limitation; cold finished bar was left uncovered, save by a so-called consultation provision. The result was

predictable: stymied by the limits on hot rolled bar, European steel makers diverted their production to cold finished bar. During 1981, which was the base year under the EC agreement, the Community's producers had taken a 4.88% share of the domestic cold finished bar market. By 1984, this share had grown to 6.16%. For the first twelve months of the President's program, until European shipments were brought under control by a new agreement, their market share had grown to 9.6%. In other words, the incentives for diversion had caused a doubling of cold finished steel bar exports from the EC.

3. A recent example of diversion is found in the efforts to set up a pipe production facility in Panama that would use Brazilian sheet. The clear objective of that arrangement is to avoid the express undertakings made by the Brazilian government to limit their sheet exports to the United States.

Another such case relates to ths American structural steel industry, one that uses 5 million tons of steel per year and sells products worth $6 billion. It now appears that countries subject to voluntary restraint arrangements are using fabricators in Taiwan and Singapore to circumvent the limits in those undertakings. As a result imports from Taiwan and Singapore have exploded, from negligable levels in 1984 and before to tens of thousands of tons already this year.

4. In 1979, a 23% antidumping duty was imposed on imports of Japanese "plied acrylic yarn." The duty was initially effective to curtail the dumped imports, but it was soon evaded. Under a scheme for diversion, Japanese fiber producers and their trading companies shipped raw fibers to affiliate companies in other, lesser developed, Southeast Asian countries. The fiber was processed into yarn in those countries and exported to the United States as an LDC product. In this manner, the Japanese fiber producers and their trading companies were able to continue their business of selling dumped products in the United States by diverting their sales of unfairly priced products through third country processors.

The Effects of Diversion

We are in the process of developing measurements of the impact of diversion to downstream products. In many cases, our tariff classifications do not include a specific breakout for downstream articles like screw machine products. Those items might enter as "parts" of automobiles or farm equipment. Nonetheless, some measurements have been made, and the conclusions are fairly clear:

1. Diversion to downstream products has caused a shrinking of the markets available to American steel producers. Rather than a reduction of the so-called "steel intensity" (i.e., demand for steel), it appears that the downstream products phenomenon (or indirect steel trade) and continuing high levels of direct steel imports are principally

responsible for lower shipments by domestic steel producers.

A recent study analyzes the impact of the downstream phenomenon and underscores its importance to SSCI members and our customers. According to Dr. Milton Lower, the steel contained in imports of products such as automobiles and machinery increased by 136% between 1977 and 1985. Over the same years, the steel content of our exports declined by 17%. As a result, the U.S. went from having a positive trade balance of 3.1 million tons of indirect trade in steel-containing products in 1977 to an indirect steel trade deficit of 6.3 million tons in 1985. In other words, we had an unfavorable shift of 9.4 million tons of steel during these years.

While total steel usage in 1985 was about the same as in 1977 (103.3 million tons vs. 105.3 million tons), apparent domestic consumption of steel products, which is the available market for domestic producers, declined from 108.5 million tons to 97 million tons, a drop of 11%. These changes were in large part due to increases in downstream product imports, from 5.8 million tons in 1977 to 13.7 million tons in 1985. These are tons that could have been supplied by American producers and steel service centers.

2. Given Dr. Lower's estimates and those of a recent study by the Commerce Department that indirect steel imports displaced $8.5 billion or 30% of domestic steel shipments in 1984 alone, the Steel Service Center Institute supports current efforts to establish an accurate, ongoing Census Bureau data

series to measure the U.S. trade balance annually for products containing steel. We therefore welcome the recent decision by the Secretary of Commerce that commits the Commerce Department to help fund the receipt of accurate indirect steel trade data.

3. Some downstream industries have recently begun to quantify increased imports of competing products. The National Screw Machine Products Association, for example, has estimated that market penetration by imports increased from 7.9% in 1979 to 11.4% in 1984. There are indications that this penetration has increased even further since then.

The forging industry is another example of dramatic increases in downstream product imports. Based on a U.S. International Trade Commission study, imports of forgings in 9 categories from 1981 through the first 8 months of 1985 have gone from 15.6% to 27.2% of the U.S. market. If you break out the numbers in 3 key product categories, the numbers are even greater. For example, in the period 1981 through 1984, the market penetration by crankshaft imports increased from 43% to 61%, fittings and flanges from 22% to 48%, and undercarriages from 14% to 44%.

Another large customer group of SSCI members affected by this issue is the tooling and machinery industry. These producers make the tools, dies and molds that are essential to mass production manufacturing in this country. At its height a $20 billion industry, the tooling and machining sector has witnessed erosion directly proportional to the

decline in the U.S. manufacturing base as a result of diversionary dumping of the products made from the tools, dies and molds they produce.

The International Trade Commission recently found that the average level of ball and roller bearing imports imported directly and as downstream products increased from 22% in 1978-1983 to 28% in 1984-1985. In dollar terms, increases of bearings incorporated into downstream imports went from $173 million in 1978 to $431 million in 1985.

We do not contend that all the increases in imports of steel containing products are due to diversion. Certainly, the unrealistically high value of the dollar as well as other economic factors have increased our imports across-the-board, while holding our exports down. Nonetheless, the evidence is clear that diversion is a serious problem and that the incentives for its expansion are growing in steel and many other industries. There is also no doubt that the net effect of this diversion is to undercut the objectives of our trade laws and our agreements with other countries.

For these reasons, we respectfully ask the Committee to give serious consideration to the proposals we have made to meet the diversion problem.

STATEMENT BY MR. BELMAN:

Thank you Mr. Chairman. My name is Murray Belman. I am a partner in Thompson & Mitchell, counsel to the Cold Finished Steel Bar Institute.

Our proposals to deal with the problem of diversion are, we believe, fair and measured. They are aimed at preventing circumvention of our trade laws and of the international agreements concluded to effectuate those laws. Our proposals are not protectionist, since they do not seek to limit fairly traded imports. Finally, our proposals have been designed with great care to make them easily administrable by the Department of Commerce and other government agencies.

The suggested provisions would deal with four areas:

1. First, we recommend that a new section be adopted to make "diversionary dumping" an actionable unfair trade practice. Under present law, U.S. industries may not object to imports of products containing dumped raw materials or components. For example, if Swedish steel subject to a dumping finding were incorporated into German machine tools that are sold in the United States, the indirect dumping would not be actionable and American manufacturers would have no recourse to U.S. trade law remedies.

Our proposal would cure this situation by requiring, in any dumping investigation of a finished product, that the fair value of a dumped input be factored into the determination whether that finished product is fairly priced in the U.S. market.

You may recall, Mr. Chairman, that legislation dealing with diversionary dumping was adopted by both Houses of Congress in 1984. However, the provision was deleted in conference in response to representations by the Administration that the provision would be too difficult to administer. Our present proposal deals with the administrability issue by making the diversionary dumping provision applicable only to inputs that are subject to outstanding dumping orders or are covered by intergovernmental restraint arrangements that cause the termination or suspension of a previous dumping investigation. Under our proposal, if a dumping order on a raw material or component is in effect, the foreign market value determined in the prior proceeding will be applied in determining the existence of diversionary dumping. We believe that these steps will cure any significant problems of administration that might have been caused under the 1984 version of the provision.

We believe that our proposal is a reasonable response to the realistic expectation that once an input product is proved to be dumped, it may be diverted to third country producers who will take advantage of the dumped price in manufacturing downstream products for the U.S. market. Because the provision would only apply to dumped imports subject to an arrangement or after a finding has been made that the input was injuriously dumped in the United States, foreign downstream producers will have the opportunity to

adjust their prices to offset the unfair advantage they might otherwise enjoy in the U.S. market. The net result will be that offshore producers using dumped inputs would be placed on the same competitive footing as U.S. producers.

2. Our second proposal would give standing to U.S. industries to challenge the evasion of our trade laws that occurs when dumped and subsidized competitive products are imported as components of other products. As this Subcommittee well knows, dumping and subsidization have been considered to be unfair international trade practices since the GATT was adopted in 1948. The unfairness of those practices does not disappear when the beneficiary product is a component of another product and is further processed. Instead, the unfair benefits simply assist a second industry. Accordingly, it makes no sense to deny U.S. parts makers the opportunity to file dumping and subsidy law petitions alleging injury due to imports of "like" product components contained in finished product imports.

Our proposal would end this anomaly by permitting American makers of "like" products to institute appropriate actions under our unfair trade practice laws. There is no provision of the GATT itself that this proposal would contravene. However, if there are questions under the GATT Subsidies or Antidumping Codes, amendments to those Codes should be negotiated. In the meantime, action should be taken to end the unjustifiable loophole that now deprives domestic

parts producers of an opportunity to complain about dumped or subsidized parts that compete with their products by virtue of their being incorporated into finished product imports.

3. Our third proposal would amend the Trade and Tariff Act of 1984 to establish clearer statutory guidelines on "upstream subsidy" investigations. Under most situations, an upstream subsidy is actionable under our trade laws only if it is provided by the government of the country in which the end product is made. One exception to that general rule was incorporated in the 1984 Act to include subsidies paid by a customs union to producers in a member country. We believe that that provision should be expanded to take account of the realities of trade within a customs union. By definition, products of one member country of a customs union are treated as domestic products of other member countries. Consequently, it makes no economic difference whether a subsidy on a component is paid by the country in which an end product is made or paid by another member country.

A perfect example of this situation can be found within the European Community. Cold finished bar makers in the UK have access to subsidized hot rolled bar produced by British Steel. If they purchase that product, their cold finished bar exports to the United States would be subject to upstream subsidy proceedings. However, under present law, the UK producer could buy French hot rolled bar and immunize itself from U.S. trade laws. Since French steel is freely

traded in Britain on the same basis as that sold by British Steel, that result makes no economic sense.

Again Mr. Chairman we believe that our proposal is a reasonable effort to deal with a genuine problem with existing legislation.

4. Our final proposal is aimed at the diversion that is likely to be caused by the imposition of large dumping or countervailing duties. In such cases, we believe that it is reasonable to expect administering authorities to be alert for the possibility of diversion.

Our proposal would require the Commerce Department to monitor increases in imports of downstream products that are likely to be vehicles for diversion. For example, where large (15% or more) dumping or subsidy duties have been imposed on input products such as steel -- or where a restraint agreement is used to settle a dumping or subsidy case involving large (15% or more) preliminary determinations of unfair trading -- U.S. producers would be able to identify to the Commerce Department other products in which the dumped or subsidized steel is likely to be used as a raw material. In the event imports of those intermediate or end products from a foreign country increase by more than 10% in any six month period, the Commerce Department would be required to investigate whether dumping or subsidization is occurring, either directly or by virtue of the dumped or subsidized components.

Our proposal is not unlike actions that have already been taken by the Department of Commerce to counter a major threat to the President's steel program. In February of this year, the Department wrote all countries that have undertaken voluntary restraint arrangements, referring to reports of plans to divert steel from signatory countries into nonsignatory countries for further processing and reexport to the United States. The letter stated:

> The Department views such reports with concern, since any venture of this kind would raise serious questions concerning the effective administration of the arrangements and the integrity of the President's steel program.

The Department also stated that it would continue to monitor closely imports of steel products from both arrangement and nonarrangement countries. The letter warned that the United States was prepared to take administrative measures, including action under Section 301 and other unfair trade laws, to ensure that the objectives of the President's program were met.

Our proposal is a variant of the Commerce Department approach, but it shares its main element: establishment of a monitoring program to assure that diversion does not undercut our trade laws and related programs. While our proposal is hinged to investigations under the dumping or countervailing duty laws, it could easily be expanded to encompass action under Section 301 as well. The proposal could also be used to deal with diversion to evade limitations under voluntary arrangements, even on products not previously subject to dumping or CVD actions. We believe that the modalities are not as important as the clear expression of government policy to be on the lookout for diversion and to deal with it promptly if it occurs.

Mr. Chairman, as a convenience to the Subcommittee, we have attached to our Statement the specific legislative language that we are recommending.

Thank you Mr. Chairman.

DIVERSIONARY DUMPING

(a) Section 771 of the Tariff Act of 1930 (19 U.S.C. 1677) is amended by adding at the end thereof the following new paragraph:

"(18) Diversionary Dumping. --

(A) In General. -- Diversionary dumping occurs when any material or component which --

(i) is incorporated into the merchandise under investigation, and

(ii) has been the subject of a previous investigation under subtitle B,

is purchased by the manufacturer or producer of such merchandise at a price that is less than the foreign market value of such material or component.

(B) Determination of Foreign Market Value.--

(i) Antidumping Duty in Effect.-- If an antidumping duty order is in effect with respect to the material or component described in subparagraph (A) at the time a determination of the existence of diversionary dumping is made, the foreign market value of such material or component used in determining the amount of such duty shall be used in determining the existence of diversionary dumping.

(ii) No Antidumping Duty in Effect.--If the previous investigation under subtitle B has been terminated or suspended because of the entry in force of any arrangement, agreement, or understanding entered into or undertaken by the United States and any foreign country or foreign customs union containing quantitative limitations, restrictions, or other terms relating to the importation into the United States of the material or component described in subparagraph (A), the determination of the foreign market value of such material or component which is used in determining the existence of diversionary dumping shall be based upon the best available evidence, including the allegations contained in any petition filed with respect to any previous investigation of such material or component under subtitle B and any information gathered in such previous investigation."

(b) Paragraph (4) of Section 773(a) of the Tariff Act of 1930 (19 U.S.C. 1677b(a)(4)) is amended --

(a) by striking out "or" at the end of subparagraph (B),

(b) by striking out the comma at the end of subparagraph (C) and inserting in lieu thereof "; or", and

(c) by inserting after subparagraph (C) the following new subparagraph:

"(D) diversionary dumping;"

(c) Section 773 of the Tariff Act of 1930 (19 U.S.C. 1677b) is amended --

(a) by inserting "(including such adjustments as may be appropriate to take into account the effects of diversionary dumping on such costs)" after "in question" in the first sentence of subsection (b), and

(b) by inserting "or components, as appropriately adjusted for diversionary dumping," after "the cost of materials" in subsection (e)(1)(A).

STANDING

(a) Subparagraph (C) of Section 771(9) of the Tariff Act of 1930 (19 U.S.C. 1677(9)(C)) is amended to read as follows:

"(C) a manufacturer, producer, or wholesaler in the United States of a like product, or of--

(i) major parts,

(ii) materials,

(iii) components, or

(iv) assemblies or subassemblies,

which, due to inherent characteristics, are intended to be incorporated into a like product."

(b) Paragraph (9) of Section 771 of the Tariff Act of 1930 (19 U.S.C. 1677(9)) is amended by striking out "like product" in subparagraphs (D), (E), and (F) and inserting in lieu thereof "like product or of a major part, material component, assembly, or subassembly described in subparagraph (C)."

(c) Subsection (b) of Section 201 of the Trade Act of 1974 (19 U.S.C. 2251(b)) is amended --

by striking out "to the domestic industry producing an article like or directly competitive with the imported article" in paragraph (1) and inserting in lieu thereof "to any domestic industry that produces an article like or directly competitive with the imported article or that produces materials, parts, components, or subassemblies which, due to inherent characteristics, are intended to be incorporated in an article like or directly competitive with the imported article."

UPSTREAM SUBSIDIES

(a) Subsection (a) of Section 771A of the Tariff Act of 1930 (19 U.S.C. 1677-1(a)) is amended by inserting "or is paid or bestowed under the authority of any statute, regulation, policy, or practice of the customs union or any of its members" after "provided by the customs union" in the second sentence.

(b) Subsection (b) of Section 771A of the Tariff Act of 1930 (19 U.S.C. 1677-1(b)) is amended by adding at the end thereof the following new paragraph:

"(3) Diversion.--

(A) Determination.--If--

(i) a countervailing duty order is in effect with respect to an input product, or

(ii) an input product is subject to any arrangement agreement, or understanding entered into, or undertaken by, the United States and any foreign country or foreign customs union which contains quantitative limitations or restriction on, or other terms relating to, the importation of such input product into the United States, and a subsidy continues to be

paid or bestowed on such input product after the date on which such countervailing duty order was issued or on which such agreement took effect, the administering authority shall determine whether an increase in imports of the merchandise under investigation has occurred since such date.

(B) Presumption.--If the determination made under subparagraph (A) is affirmative, the administering authority shall presume that a competitive benefit is being bestowed on the merchandise under investigation."

MONITORING DOWNSTREAM IMPACT OF COUNTER-
VAILING AND ANTIDUMPING DUTIES

(a) Section 702(a) of the Tariff Act of 1930 is amended by adding at the end thereof the following:

"The administering authority shall determine that a formal investigation is warranted when imports from any country of a monitored product during any six-months' period exceed 110% of the imports of such product during the previous six-months' period.

"(1) DEFINITIONS. As used in this subsection --

"(A) the term "monitored product" means any intermediate or end product which contains a monitored component and which has been notified to the administering authority in accordance with paragraph (2) of this subsection;

"(B) the term "monitored component" means any article which has, within the previous five years, been --

"(i) subject to a countervailing duty order under section 303 or section 701 in the amount of 15% ad valorem or more, or

"(ii) included in any suspension agreement under section 704 after being the subject of an affirm-

ative preliminary determination under section 703(b) in which a net subsidy of 15% ad valorem or more was estimated.

"(2) NOTIFICATION. The administering authority shall issue regulations under which domestic producers of articles like any monitored component may notify the administering authority that, due to its inherent characteristics, such monitored component is routinely used as a major part, material, component, assembly or subassembly of specifically identified intermediate or end products."

(b) Section 732(a) of the Tariff Act of 1930 is amended by adding at the end thereof the following new subparagraphs:

"(3) CASES INVOLVING MONITORED PRODUCTS. The administering authority shall determine that a formal investigation is warranted when imports from any country of a monitored product during any six-months' period exceed 110% of the imports of such product during the previous six-months' period.

"(4) DEFINITIONS. As used in this subsection --

"(A) the term "monitored product" means any intermediate or end product which contains a monitored component and which has been notified to the administering authority in accordance with paragraph (5) of this subsection;

"(B) the term "monitored component" means any article which has, within the previous five years, been --

"(i) subject to an antidumping duty order under section 731 in the amount of 15% ad valorem or more, or

"(ii) included in any suspension agreement under section 734 after being the subject of an affirmative preliminary determination under section 733(b) in which the average amount by which the foreign market value exceeds the United States price is estimated to be 15% or more.

"(5) NOTIFICATION. The administering authority shall issue regulations under which domestic producers of articles like any monitored component may notify the administering authority that, due to its inherent characteristics, such monitored component is routinely used as a major part, material, component, assembly or subassembly of specifically identified intermediate or end products."

Mr. JENKINS. Thank you very much for your testimony. I want to express my appreciation to the entire panel, because I think it is excellent testimony. I would hope that the other subcommittee members who could not be here will have the opportunity of reading your testimony. I do believe that it is an excellent statement.

Let me ask two or three questions for Mr. McArdle. I have a question on the export dumping amendment that you referred to, sir.

What U.S. industries would benefit from this legislation, basically?

Mr. MCARDLE. Any U.S. industry which is competing internationally against producers in other countries which are dumping, and I would draw your attention to U.S. industries such as the paint brush industry, et cetera, so any U.S. industry which is competing internationally would benefit by this provision.

Mr. JENKINS. All right.

Why won't the present section 301 get at the unfair labor practices that you refer to?

Mr. MCARDLE. We view 301 as being directed to Government-inspired and Government-directed unfair trade practices, and what we are talking about are unfair trade practices such as dumping initiated by private companies.

Mr. JENKINS. And the present 301 does not get to that problem?

Mr. MCARDLE. Correct.

Mr. JENKINS. Does this amendment pose any problems with GATT?

Mr. MCARDLE. I am sure that everybody will say that any amendment would cause a problem under the GATT. We believe it is a problem that can be overcome because currently threat of material injury under the GATT requires a determination on fact, not speculation.

In addition, our proposal, which would require a demonstration of an unfair marketing practice, such as dumping, would have to have occurred in two other GATT member countries, and in our opinion, it would be proexport, and proadherence to GATT, because the United States would be demonstrating that it is willing to give full faith and credit, at least on a presumption basis, to decisions made by authorities in other GATT member countries.

I have personally participated in Europe and Australia in dumping actions against the Japanese there. And not surprisingly, they are as studious as our own Government with respect to these matters, so in our opinion, it would be beneficial to have this particular provision, because it would inhibit dumping throughout the rest of the world.

The U.S. industry can compete, there is no question about that, if everybody is required to compete under the same terms.

Mr. JENKINS. Really, your company being involved in exporting in manufactured products competing with you are dumped in one of your competitive areas in Europe or wherever, then you are just as surely injured as if these were dumped here?

Mr. MCARDLE. Absolutely. We have to compete against these dumped products, and we have to sustain a loss, and when we sustain a loss, we don't make profits, and then we can't reinvest that money in the business for development of new products to compete.

As I said in my prepared testimony, if we are forced to retreat to Fortress America, ultimately U.S. industry will be gone.

Mr. JENKINS. Thank you very much.

Mr. Pease.

Mr. PEASE. Thank you very much. I appreciated the testimony of all of you gentlemen.

I would like to direct my comments and questions to the testimony of Mr. Schagrin. I was very much concerned with your testimony.

You say, we believe that every counsel for a domestic industry would agree that there is a tremendous crisis occurring presently at the International Trade Commission. The standards for determination of material injury being used by this Commission are so much higher than the standards set by Congress, and one's chances of prevailing in a final determination, no matter the facts supporting a finding, are becoming slimmer.

Here we are in this committee in the Congress trying to tighten up the trade laws, trying to make more unfair trade practices actionable, so that U.S. companies have a fair opportunity, a reasonable opportunity to compete with their overseas competitors, and it sounds to me as if the International Trade Commission, a U.S. agency, is in the process of undercutting these efforts by administrative action.

Is that a fair statement?

Mr. SCHAGRIN. I think that is a very fair statement, Congressman Pease. That is why we thought the matter had to be raised with you. In fact, we can provide you with the voting records of the Commission, and if you were to look at their records and final determinations over the past several years, you would see that in the past 2 years, that record has changed substantially.

In fact, thus far this year, affirmative Commission determinations equal the negative determinations, their voting record thus far this year is 5–5.

In past years, in final determinations, probably three-quarters of their determinations were affirmative, and the reason for that is the material injury standard, as set by Congress is not supposed to be that high a standard.

It is if an industry is materially injured by reason of the imports, and that material injury is defined in the legislative background as any injury that is not immaterial or insignificant, what has happened is that we basically have two of the Trade Commissioners who have instituted, instead of looking at all the criteria laid out by Congress, they have laid out their own tasks, and they say you have to show that foreign manufacturers have a predatory intent, that the design of their dumping or other unfair trade practices, or subsidy in the U.S. market is to gain so much market share that they would be able to put U.S. industries out of business.

And that is a very unfair standard, not the one that Congress devised. I believe it is undermining the ability of the Commission to enforce the laws.

Mr. PEASE. I appreciate that comment.

I noted with interest in your testimony that there are specific factors laid out in the law for the ITC to consider when it deter-

mines whether a domestic industry is being injured by reason of unfairly traded imports.

And you say in your testimony that the Vice Chairman of the Commission, Susan Liebeler, has come up with her own set of criteria, and she seems to be using those rather than the criteria outlined in the law.

Another new member of the Commission appears to be following her lead, and—is it Brunsdale?

Mr. SCHAGRIN. Brunsdale.

Mr. PEASE. Is that correct? They are going off on their own rather than following the intent of Congress?

Mr. SCHAGRIN. That is correct, and we have, and other domestic parties have appealed some of the decisions to the Court of International Trade. However, that appellate process to the Court of International Trade takes 12 to 24 months before the Court has an opportunity to rule as to whether these Commissioners are acting in accordance with the laws that you have passed or not.

One of the problems is, in talking with Commission staff, much to our surprise, we have found out that the personal staffs of these two Commissioners are either former Federal Trade Commission staff members, or are on loan from the Federal Trade Commission, and that may be one of the reasons why these Commissioners are really taking a viewpoint that is much more that of the Federal Trade Commission in terms of trying to stop antitrust violations, and not that of the traditional International Trade Commission standards for determining material injury.

There is not only a great deal of concern on the part of domestic producers, but if this committee were to discuss with those long-term employees of the Commission, Directors of Investigation and of Operations, counsel, General Counsel, you will find on behalf of permanent staff of the Commission, there is a great deal of concern on the part of Commission staff about the direction that the ITC has taken.

Mr. PEASE. Mr. Schagrin, both of these Commissioners were appointed by President Reagan?

Mr. SCHAGRIN. That is correct.

Mr. PEASE. The administration, in the last few years, has been talking a lot about being tough on trade, tough on unfair trade.

They have said, I think, that toughness in enforcement of the law is better than protectionist, outright protectionist legislation. Why would a President who espouses toughness appoint people to the International Trade Commission who undercut his position and make the Government role weaker than stronger?

Mr. SCHAGRIN. Well, Congressman, I can't say what the motivations of the President or of the White House are. One of the points of our testimony, and I think that many in the domestic industry who hear common speeches from administration personnel about aggressive enforcement of our unfair trade laws, we always agree with that rhetoric.

No one is more in favor of aggressive enforcement of unfair trade laws than domestic producers. Unfortunately, we see that the reality of administration policy does not always mirror that rhetoric, and sometimes, such as these appointments, we seem to have appointments of people who have more of a free trade philosophy

than a fair trade philosophy, and that is what everyone on this panel is asking for, and that is, we don't need protectionist answers to our problems.

The unfair trade laws on the books, although they may need some modifications, are basically good laws. We need vigorous enforcement of these laws.

Mr. PEASE. Mr. Chairman, I must say that I find this information extremely disturbing. We in Congress are under substantial pressure from the public to enact protectionist legislation.

We are trying in this subcommittee, and I think in the full Ways and Means Committee, to take a different route, where we stress fair trade, and try to make a level playing field, and insist that our trading partners give fair access to their markets for our products, and that it cease and desist from subsidizing goods coming into our market.

It seems to me that if Congress is going to try to take a responsible course, but a difficult course politically, that we can't be undercut by the administration in not enforcing the laws that are already on the books.

Here we are, Mr. Chairman, talking about giving additional authority to the USTR, and to the ITC, in an effort to make sure we do have fair trade, as a way of hearing off GATT illegal quotas or tariffs that might be imposed.

Yet, this administration, which talks tough, appears to be appointing people to the International Trade Commission who are anything but tough. If anything, they are tough on the petitioners who are seeking relief under the trading laws of this country. I can't understand that. It bothers me a great deal.

Well, Mr. Chairman, particularly if we are thinking of giving more authority to the ITC, if this sort of thing is going on, we may want to talk with the members of the Commission some time in the next few weeks before we enact that legislation.

It seems to me that if we are going to have an International Trade Commission, they ought to at the least follow the intent of Congress, and not set out of some extreme private enterprise, free trade doctrine or approach undercut what we are trying to do here in Congress.

Mr. Schagrin, I appreciate your bringing this to our attention.

Mr. JENKINS. Thank you, Mr. Pease. You have raised an interesting point, and I am not surprised at your conclusion whatsoever.

The subcommittee should ask Chairman Gibbons to contact the ITC, to give them an opportunity to respond to the statements that you have made.

I for one will not be surprised if we find that you are correct. Many people on the subcommittee are frightfully fearful of protectionist legislation, and I place that in quotes.

I have watched the rhetoric that has been propounded through the years. And, I recognize that primarily what we get is rhetoric, and not reality. I have found that the only way to get their attention is to come pretty tough with a bill.

The only problem is, we ought to go beyond that and override a couple of vetoes.

Mr. PEASE. Any particular vetoes?

Mr. JENKINS. On a bill or two. I can assure the other members of the full committee and the subcommittee, once we do that, we will have the attention of the people downtown.

So I want to thank the panel very much for your testimony. I think it is extremely interesting.

Mr. PEASE. Would the chairman yield?

Mr. JENKINS. Be happy to yield.

Mr. PEASE. I would like to pursue this just a little bit further.

I have been given a copy of some views of one of the other Commissioners on what is going on in the International Trade Commission now. If the chairman will indulge me, I would like to read several paragraphs, and then ask that the entire document be made a part of the record.

This is Commissioner Eckes in a dissenting view:

> Perhaps I am misreading my colleague's analysis and thus misinterpreting the outcome of recent cases.
>
> However, the net effect of some of my colleague's reasoning has been to discard the statutory tests and revise the law by administrative fiat.
>
> In my view, the Commission's statutory findings cannot and should not be made by improvising a host of dubious, arbitrary and illegitimate techniques, proxies, presumptive tests, elasticities, to rationalize negative interpretations.
>
> The statute is generally clear, and those of us charged with administering it have no business substituting academic fictions for the factual record, in our own judgment.

Commissioner Eckes goes on to say, "since the Trade Agreements Act of 1979 was implemented, most Commissioners have tried to administer our trade laws with fairness and impartiality," and if I might interject, I think essentially that is what a Commission like this ought to do, and what petitioners seek, fairness and impartiality.

The Commissioner goes on to say from time to time, all reviewing courts may have disagreed with individual Commission decisions, but the Commissioners generally have worked diligently and in a nonpartisan manner to apply the law as it was written by Congress, and from this sensitivity to statutory construction and legislative intent, has emerged an extensive corpus of case law that establishes a transparent framework for the predictable administration of our trade laws.

Again, I think petitioners are looking for transparency and predictability. To me, the new revisionism is a threat to the fairness, predictability and integrity of our trade law system. In devising substitutes for the statute, the revisionists offer the party's only proxies, presumptions and abstractions, not the certainty of consistent statutory interpretation.

I would ask unanimous consent to insert this dissent in the record.

Mr. JENKINS. Without objection.

[The information follows:]

JSB

Dissenting Views of Commissioner Eckes

I respectfully disagree with my four colleagues in the Commission majority. On the basis of the record in investigations Nos. 701-TA-239 and 731-TA-248 (Final), I determine that an industry in the United States is materially injured by reason of imports of fuel grade ethanol (fuel ethanol) from Brazil which the Department of Commerce has determined to have been subsidized and sold at less than fair value (LTFV).

Let me summarize, briefly, these views. My determinations are based upon the record developed over the entire period of investigation. This record conclusively shows that, except for the period immediately following the filing of this petition, the condition of the domestic industry deteriorated as the imports of fuel ethanol from Brazil increased steadily and rapidly. Brazilian imports have undercut domestic prices and caused material injury. In addition, many factors in the record indicate that Brazilian imports of dumped and subsidized ethanol pose a real and imminent threat of future material injury to domestic producers.

This set of views will discuss fully the reasons for my affirmative determination, and explain why the majority's negative holding may not be "in accordance with law." From my perspective this case elevates to prominence a fundamental

legal issue relating to how the Commission applies the statutory criteria in our trade laws. At issue here is whether members of the Commission have the discretion to disregard explicit statutory criteria and substitute their own presumptions and tests in administering our trade laws. Or must the Commission apply the law as it is written, even though individual Commissioners may disagree personally with the trade laws and the intent of Congress?

Issue

Domestic industry 1/and like product 2/

The Commission defined the like product as domestically produced fuel ethanol in its preliminary determination. 3/ None of the parties has challenged or taken issue with that definition, and no new information has been developed in the record which suggests that it should be changed. Therefore, domestically produced fuel ethanol is "like" the imports under investigation and that the domestic industry is composed of U.S. producers of fuel ethanol.

Condition of the domestic industry

In assessing the condition of the domestic fuel ethanol industry during the preliminary investigation, the Commission

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1/ 19 U.S.C. 1677(4)(A).
2/ 19 U.S.C. 1677(10).
3/ Certain Ethyl Alcohol From Brazil, Invs. Nos. 701-TA-239 and 731-TA-248 (Preliminary), USITC Pub. 1678 (April 1985) at 3-5 (Hereinafter referred to as "Preliminary").

observed several key situational factors that have shaped this industry's growth. It noted, first, that the U.S. market for this product is comparatively young and that consumption is growing rapidly. Second, the Commission observed that this industry has relied heavily on the availability of tax incentives. And, third, it mentioned the obvious point that the price of fuel ethanol depends heavily on the price of gasoline. These situational considerations which are part of the underlying conditions of trade have not changed.

Based on the record of this investigation, it appears that the domestic ethanol industry and the U.S. market are still expanding. Indeed, from 1982 through 1985 consumption grew over 300 percent. The Commission observed this growth pattern in the preliminary investigation when it reported that "domestic production, capacity, shipments, employment, wages and net sales all increased substantially from 1982 to 1984." 4/ From my standpoint, these are precisely the trends that one might expect for a new industry in a growing market.

Even so, a year ago when this Commission rendered its preliminary affirmative determination, there were dark clouds on the horizon, and these remain today. For one thing, despite its expansion, the domestic industry remains heavily dependent on tax incentives and confronts a frequently changing and sometimes hostile climate of regulations and laws. While federal tax exemptions favoring development increased,

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4/ Id. at 6.

state incentives generally decreased or were eliminated. For another thing, the domestic industry remains vulnerable to the effects of declining gasoline prices. 5/ And, of course, a

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5/ While a broad spectrum of factors may be considered in examining the conditions of trade it is imperative to note that the Commission's causation analysis must be more narrowly focused. In the legislative history Congress warned the Commission specifically against weighing the causes of injury in a Title VII investigation. The House Ways and Means Committee report on the Trade Agreements Act of 1979 says:

> "In determining whether such injury is 'by reason of' such imports, the ITC looks at the effects of such imports on the domestic industry. The law does not, however, contemplate that injury from such imports be weighted against other factors . . . which may be contributing to overall injury to an industry. Any such requirement has the undesirable result of making relief more difficult to obtain for those industries facing difficulties from a variety of sources, precisely those industries that are most vulnerable to subsidized or dumped imports." H.R. Rep. No. 96-317, 96th Cong., 1st Sess. 47 (1979).

Similar language appears in the Senate Report on the Trade Agreements Act of 1979. See Also S. Rep. No. 249, 96th Cong., 1st Sess. 57, 74-75 (1979).

Moreover, the Court of International Trade provides important guidance to the Commission regarding the requirement of a causal nexus between the subject imports and the role of weighing various causes by the Commission. The court states:

> The statute's causation prerequisite to an affirmative injury determination is satisfied if the subsidized imports contribute, even minimally, to the conditions of the domestic industry, and the Commission is precluded from weighing the causes of injury. [emphasis added]

British Steel Corporation and British Steel Corporation, Inc., v. United States of America, United States International Trade Commission, 593 F. Supp. 405, 413 (CIT 1984).

third uncertain variable has been the pattern of imports. 6/ 7/

When it conducted the preliminary investigation, the Commission found that the principal indicator of injury to the domestic industry was poor financial performance. Operating income for the fuel ethanol industry decreased substantially from 1982 to 1983 and showed a loss in 1984. 8/ In 1985, however, there was some improvement, and operating income increased to nearly $50 million dollars and a 6 percent share of net sales. 9/ While my colleagues may see this as a sign of health, and so conclude that the domestic industry is not experiencing material injury, such a conclusion is entirely unjustified in the present investigation. The next section of this opinion shows that this financial upturn is artificial and, in my judgment, the domestic industry continues to experience material injury, which the statute defines as injury that is "not inconsequential, immaterial, or unimportant." 10/

6/ Parties to this investigation agreed that there is a possibility for market development using fuel ethanol as an octane enhancing ingredient in gasoline. This opportunity has not been realized to date, however, and even if ethanol gains some acceptance as an enhancing agent, respondents state that "the net cost of ethanol to the distributor must be at least 15 cents a gallon less than the wholesale price of gasoline." Transcript of the hearing in Invs. Nos. 701-TA-239 and 731-TA-248 on February 5, 1986, at 158 (hereinafter referred to as "Transcript").

7/ Preliminary at 6.

8/ Report of the Commission in Invs. Nos. 701-TA-239 and 731-TA-248(Final) at A-30 (hereinafter referred to as "Report").

9/ Report at A-30.

10/ 19 U.S.C. 1677(7)(A).

Material Injury by Reason of Unfairly Traded Imports 11/

I have concluded that the domestic ethyl alcohol industry is materially injured by reason of Brazilian imports. In approaching the evidence, this Commissioner sought to apply the analytical criteria established in the statute.

In assessing material injury, the statute stipulates that the Commission shall consider among other factors the following:

> (i) the volume of imports of the merchandise which is the subject of the investigation,
> (ii) the effect of imports of that merchandise on prices in the United States for like products, and
> (iii) the impact of imports of such merchandise on domestic producers of like products. 12/

The statute continues, stating that for purposes of evaluating these factors that the Commission "shall consider" and "shall evaluate" certain specific factors contained in the subsequent provisions. 13/

11/ Most of the data on imports, import penetration, income and loss and pricing are confidential and therefore must be discussed in general terms.

12/ 19 U.S.C. 1677 (7)(B).

13/ The Commission's reviewing court has in its opinions focused on this mandate. In Gifford-Hill Cement Co., et al. v. United States, 615 F. Supp. 577, 584 (CIT 1985), the court states

> "In evaluating injury caused by dumping, the ITC must follow statutory guidelines which set forth certain indicia of injury that the Commission must consider . . . . These indicia include the volume of imports, the effect of imports on prices of the like domestic product, and the impact of imports on domestic producers of the like domestic product."

If one looks at each of these, one finds compelling evidence for an affirmative determination. First, imports increased steadily and rapidly from 1982 to 1984. 14/ Brazilian imports more than doubled from 1982 to 1983 and more than tripled from 1983 to 1984. 15/ This rising import volume brought similar increases in market penetration. Brazilian fuel ethanol took a significant share of the U.S. market in 1982 and more than doubled that share in 1984. 16/

It is important to note that while Brazilian imports were increasing, the financial condition of the U.S. industry deteriorated. In 1982, a start-up year for the domestic industry, Brazilian import penetration was significant, and domestic producers had a negative ratio of operating income to net sales. The following year, Brazilian market penetration increased slightly, and with rising consumption and production in the U.S., the domestic industry managed to generate a low positive ratio of operating income to net sales. 17/

14/ At the Commission hearing in this investigation on February 5, 1986, counsel for those in opposition to the petition suggested that a more accurate analysis of the correlation between import penetration and profitability should be based on "import sales." (Transcript at pp. 230-231). Presumably, counsel for those in opposition to the petition, felt that "import sales" figures had either increased absolutely or relatively for the interim period (January-November) 1985. The Report clearly shows that this is not the case. Imports decreased in both absolute and relative terms in that time frame (Report at A-39-40).

15/ Report at A-38.

16/ Report at A-39-40.

17/ Report at A-30, A-39-40.

But this promising improvement ended abruptly in 1984 when Brazilian imports soared, taking nearly two and one-half times their 1983 share of the domestic market. I believe it significant that while imports were climbing in 1984, domestic profitability deteriorated sharply. For the entire year 1984 domestic producers had a negative ratio of operating income to net sales. Operating income plummeted; while the domestic industry figures were positive in 1983, they decreased significantly to negative figures in 1984. 18/ To me the data cited above demonstrate clearly how unfairly traded Brazilian ethyl alcohol has injured domestic producers. 19/

During four and one-half years on the International Trade Commission, this Commissioner has participated in some 1000 investigations. In these he has noted a predictable pattern: Imports often fall after a domestic industry submits a petition for import relief. And, this is precisely what occurred in

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18/ Report at A-39-40 and A-49.

19/ In the past Commissioners have frequently looked for a correlation between imports and profitability when they perform the statutory analysis of considering the impact of imports on domestic producers of like products. See, for example, "Views of the Commission," Motorcycle Batteries from Taiwan, Inv. No. 731-TA-42 (Final), USITC Pub. 1228 (March 1982) at 9. More recently, I found such a correlation in Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. No. 731-TA-254 (Final), USITC Pub. 1808 (Feb. 1986) at 31-32.

Former Chairman Bill Alberger frequently employed correlation analysis, especially when writing a negative determination. See Bicycle Tires and Tubes from Taiwan, Inv. No. 731-TA-94 (Preliminary), USITC Pub. 1258 (June 1982) at 19, and Lamb Meat from New Zealand, Inv. No. 701-TA-80 (Preliminary), USITC Pub. 1191 (Nov. 1981) at 20.

1985 after counsel for the Ad Hoc Committee of Domestic Fuel Ethanol Producers filed petitions on February 25, 1985.

One can not overlook the impact the pending countervailing duty and antidumping investigations have had on the pattern of Brazilian imports. Both the Commission and our reviewing court have held that the posting of bonds and the pendancy of cases may account for a reduction in the increase of imports entering the United States and that an antidumping order can be presumed to distort the meaning of observable data regarding present conduct in the U.S. market. 20/ By analogy, a pending case which contains allegations of critical circumstances would serve to curtail imports under investigations and distort short-term data.

Domestic petitioner originally alleged critical circumstances, and had Commerce made an affirmative determination on this point the Brazilians might have been subjected to a significant duty based on the Customs value of Brazilian fuel ethanol. 21/

20/ Anhydrous Sodium Metasilicate From France, Inv. No. 731-TA-25(Final), USITC Pub. 1118 (December 1980) at 6; Rhone Poulenc, S.A. and Rhone Poulenc, Inc. v. United States 592 F. Supp. 1324, 1325 (1984). See Also Television Receiving Sets From Japan Inv. No. AA1921-66, TC Pub. No. 367 (March 1971) at 8; Matsushita Electric Industrial Co. v. United States 569 F. Supp. 853, 862 (1983), motion for rehearing denied 573 F. Supp. 122 (1983).

21/ Note that if Commerce had made a finding of critical circumstances then a significant duty would have been imposed and would have included imports that had entered 90 days prior to Commerce's published preliminary determination.

As my colleagues know, to make such a determination the Department of Commerce generally looks at a three or four-month period before and after the date a petition for relief is filed. Since there was a pronounced increase in fuel ethanol from Brazil in the four-month period prior to February 25, 1985, when the petition was filed, the Brazilians might have faced even steeper duties had there not been a significant decline in Brazilian imports in the months immediately afterward.

Indeed, fuel ethanol imports from Brazil decreased dramatically -- down 37 percent for the January-November 1985 period when compared with the same interim period for 1984. 22/ And, as one might suspect this decline in imports coincided with an improvement in the domestic industry's profitability. Net sales increased from $579 to $836 million and operating income rose from a negative figure to $50 million. The key ratio of operating income to net sales improved from a negative figure in the first 11 months of 1984 to a positive 6 percent in the same interim period of 1985. 23/

Some of my colleagues may seek to explain away this pattern, asserting instead that the Commission should base its determination on 1985 data. After all, if one looks at the most recent months imports are down and the industry appears

22/ Report at A-38.
23/ Report at A-30.

healthier. But such analysis seems myopic in light of Commission practice, decisions by our reviewing court, and the trends reflected over the entire record of this investigation. 24/

Now let's examine the effect imports have had on domestic prices. Commission data show significant underselling of Brazilian ethanol at both the distributor and end-user levels in five states where delivered price comparisons could be made. 25/ During the period of this investigation imported ethanol was sold primarily in bargeload quantities. 26/ And, the majority of distributors' delivered purchase price comparisons involving these bargeload shipments show that suppliers of Brazilian ethanol have been underselling the domestic market.

24/ Nor should one rely on elasticity analysis in rebutting the factual record of this investigation. In EC-J-010 (Jan 7, 1986) at 9, the ITC's Director of Economics notes that elasticity estimates "are usually not very reliable, are seldom statistically significant, and only rarely are sufficient price data available to allow empirical estimates of elasticities of substitution at the product level." Any effort to rely on elasticities would seem to be another instance where ". . . a theoretical model, based on a set of assumptions, may be outweighed by real world data." Maine Potato Council v. U.S., 613 F. Supp. 1237, 1244 (CIT 1985), footnote 8.

25/ Report at A-51-53.

26/ Report at A-41 (footnote 4). Reporting importers stated that between 75 and 80 percent of total 1984 imported ethanol sales were shipped by barge.

For example, in Florida, Brazilian ethanol sold for as much as 16 percent below the price of U.S.-produced ethanol. 27/ And, in Illinois, Brazilian ethanol sold for as much as 12 percent below the price of domestically-produced ethanol. 28/

A similar pattern of Brazilian underselling exists when end-user purchases are compared. Almost all of these show Brazilian ethanol underselling domestic ethanol. 29/ Because price is reportedly the major sourcing determinant in most purchases of fuel ethanol 30/, and because Brazilian and U.S.-produced ethanol are physically fungible, 31/ it is reasonable to assume that even small levels of underselling could be expected to cause domestic fuel ethanol producers to either reduce their prices or lose sales.

Obviously, changes in state and federal tax incentives as well as differing state tax treatment for domestic and imported fuel ethanol complicate any analysis of price trends. Even so, evidence available to the Commission demonstrates that lower-priced Brazilian imports of fuel ethanol had a negative effect on prices of U.S. produced ethanol. For instance, in

27/ Report at A-50-51.

28/ Report at A-83. Of the bargeload price comparisons underselling occurred in 57 percent of the Florida comparisons, 100 percent of the Illinois comparisons and 40 percent of the Ohio comparisons.

29/ Report at A-53. Eight of the nine price comparisons examined by the Commission showed underselling by suppliers of Brazilian ethanol.

30/ Report at A-55.

31/ Office of Economics Memo EC-J-094, at 1.

late 1984 when Internor, the principal importer of Brazilian ethanol, brought in large quantities of fuel ethanol to avoid an impending 10 cent per gallon increase in the duty for ethanol, prices of U.S.-produced ethanol declined by an average of 10.5 percent in all five states examined by the Commission. 32/ Indeed, several confirmed lost revenue allegations indicate that lower-priced Brazilian ethanol available during late 1984 aggravated gasoline price declines during that period, forcing U.S. producers to lower their ethanol prices. 33/

Complete price trends are best analyzed in the Florida market, where Brazilian and domestic ethanol received equal tax treatment during the entire period under investigation, and are therefore directly competitive. 34/ The prices of both U.S.-produced and imported ethanol sold in Florida declined by much more than could be expected during January 1984-October 1985, given the changes in state and federal tax incentives. 35/ Additionally, the fact that Florida ethanol prices were less closely related to the price of wholesale gasoline than in other markets analyzed indicates to me that the presence of unfairly traded Brazilian imports had a strong impact on prices in Florida. 36/

32/ Report at A-39, A-44.
33/ Report at A-56-62.
34/ Report at A-47.
35/ Report at A-44 (footnote 3).
36/ Domestic producers located in the Midwest are able to serve the Florida market by barging product down the Mississippi River.

Weighing causes in Title VII

Before concluding this section, let me comment briefly on weighing causes in Title VII investigations. The legislative history indicates clearly that unfairly traded imports need not be the "principal, a substantial, or a significant cause of material injury." 37/ It is sufficient for an affirmative determination that the unfairly traded imports be only a contributing cause. Our reviewing courts have emphasized this point in several determinations. For example, in Gifford-Hill Cement, the U.S. Court of International Trade stated: ". . . the Commission must rule in the affirmative if it finds even slight contribution from imports to material injury." 38/ From my standpoint, the substantial evidence of import penetration, price undercutting, and price depression discussed in the preceding pages is more than the "slight contribution" to injury required for an affirmative determination.

Threat of Injury

Even if I had not determined that dumped and subsidized Brazilian fuel ethanol imports were a cause of material injury, an examination of the factors the Commission must consider

37/ See S. Rep. No. 249, 96th Cong., 1st Sess. 74-75 (1979) and H.R. Rep. No. 96-317, 96th Cong. 1st Sess. 47 (1979).

38/ Gifford-Hill Cement Company v. U.S., 615 F. Supp. 577, 584 (CIT 1985). See also British Steel Corporation v. U.S., 593 F. Supp. 405, 413 (CIT 1984).

39 Threat

in threat analyses compels a determination of threat of material injury. The statute instructs the Commission to consider, among other relevant economic factors, eight specific criteria. These include the nature of any subsidy; production capacity; any rapid increase in market penetration; the probability of price depression or suppression; any substantial increase in inventories; the presence of underutilized capacity in the exporting country; demonstrable trends indicating the probability of importation causing actual injury; and the potential for product shifting. 39/

Petitioners have alleged that the subsidies determined by (1) Commerce were export subsidies and nothing in the record compels a different conclusion.

On the basis of information supplied to the Commission by (2) representatives of the Brazilian producers, it is clear that Brazil has a large and rapidly growing capability to produce ethanol (both hydrous and anhydrous). From a level of 2.2 billion gallons in 1982-1983, Brazil's effective production capacity rose at an average annual rate of about 14 percent to 3.3 billion gallons in 1985-1986. By 1987-1988 production capacity is expected to reach 3.7 billion gallons. 40/ Separate data were not available on Brazil's capacity to produce anhydrous ethanol, but information available to the

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39/ 19 U.S.C. 1677 (7)(F).
40/ Report at A-34.

Commission indicates that sufficient capacity exists to sharply increase domestic production. For example, in 1982-1983 Brazilian production of anhydrous ethanol was approximately 900 million gallons, more than three times U.S. capacity and more than four times U.S. production in that time period.

(3) Market penetration has increased rapidly over the period of investigation. Imports of fuel ethanol from Brazil captured a significant share of the U.S. market in 1982. This share increased in 1983 and more than doubled in 1984. Although there was a decrease in 1985, the import penetration figure remained at an injurious level. 41/

(4) The discussion in this opinion shows that imports of fuel ethanol from Brazil have entered the U.S. at prices that have had a depressing effect on domestic prices and consequently captured a significant share of the domestic market. Because of the established pattern of low-priced Brazilian imports into the U.S. and the fact that the U.S. is Brazil's only potential export market for ethanol, it is more than probable that long term import trends will continue.

(5) Inventories of U.S. producers increased significantly in 1983 and remained at that level in 1984. Interim figures for 1985 indicate a decline from the comparable period in 1984 but 1985 figures remained high above 1982 figures. 42/ Importers'

41/ Report at A-39-40.
42/ Report at A-28.

inventories more than doubled in 1983 and more than tripled in 1984. In 1985, importers sold from their massive inventories in order to avoid additional duties and their inventories dwindled to near zero. 43/

The Brazilian capacity to produce ethanol is staggering, and respondents have confirmed that there are virtually no plant-capacity limitations that would restrict the production of ethanol (hydrous or anhydrous). Further, respondents confirm that there is excess capacity (at least until 1990) to produce ethanol in Brazil. 44/

Adverse trends that indicate a probability that the importation of dumped and subsidized ethanol will be the cause of actual injury is evidenced by the proven ability of Brazil to change the production and marketing of ethanol very rapidly and the effect of Brazilian imports on the U.S. market over time. Brazil has demonstrated a remarkable ability to shift rapidly its production and marketing of fuel ethanol in response to changing market conditions. Brazilian production fell 25 percent in 1983, dropped another 16 percent in 1984, and then rose 28 percent in 1985. 45/ Even more drastic are the changes in amounts of fuel ethanol exported from Brazil. These exports rose 357 percent in 1984, and then fell 60 percent in 1985. 46/ When the imposition of an increased

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43/ Report at A-33.
44/ Report at table 10 and at A-20-21.
45/ Report at A-34.
46/ Report at A-34.

duty in January 1985 promised to depress Brazilian ethanol prices and profits, the Brazilians quickly boosted exports to avoid the sharp increase in U.S. duties. 47/ The effects of Brazilian fuel ethanol imports have been outlined earlier. When these factors are considered in light of Brazil's need to satisfy debt-service obligations and the fact that the U.S. is the only available export market for Brazilian ethanol, 48/ it is more than probable that absent CVD duties, the upward trends of imports will continue and have an adverse effect on the domestic industry.

Finally, the potential for product shifting in Brazil is evidenced by the fact that Brazilian ethanol production is based on sugarcane production, and a major percentage of Brazilian growers of sugarcane produce both marketable sugar and ethanol. Therefore, sugar production could easily be decreased to allow for increased ethanol production.

Commission Discretion:

It is not my responsibility to assess the correctness of the Commission majority's final determination, but I do wish to offer my perspective on several important points. First, it appears that some members of the Commission majority may have rendered a determination that is "not in accordance with law."

47/ Report at A-16-17.
48/ Report at A-33-35.

I use the word "may" deliberately, because it is not practical for the Commissioners to exchange views and respond fully to one another's argumentation and still meet the tight statutory deadlines. Consequently, my impressions of the majority's point of view are based on past practice, and their written views in recent cases, not on first-hand review of their opinions in this investigation.

Even so, it is arguable that some members of the majority may not have applied properly the statute, legislative history, and existing case law to the facts at hand. Indeed, some seem determined to revise the statute under the thin veil of administrative discretion.

1. Proxies for the Statute?

Liebler's 5 factors

In examining the impact of imports on the affected industry, one of my colleagues frequently seems to ignore statutory criteria and chooses instead to focus on five factors which, "when viewed together, serve as proxies for the inquiry

that Congress has directed the Commission to undertake."

(emphasis added) 49/ She says:

> The stronger the evidence of the following . . . the more likely that an affirmative determination will be made: (1) large and increasing market share, (2) high dumping margins, (3) homogeneous products, (4) declining prices and (5) barriers to entry to other foreign producers (low elasticity of supply of other imports). 50/

49/ This analysis is more fully developed in Certain Raspberries from Canada, Inv. No. 731-TA-196 (Final), USITC Pub. 1707 (June, 1985) at 11-19, especially 12-13. My colleague says: ". . . it seems that the statute directs the causation analysis to two basic factors: volume of imports and the effects of the LTFV imports on prices. This is not much guidance. . . . The mere presence of LTFV imports is not sufficient to establish causation." (emphasis added)

On substituting "proxy" criteria for the statute, see, for example, Certain Carbon Steel Pipes and Tubes from the People's Republic of China, the Philippines, and Singapore. Invs. Nos. 731-TA-292 through 296 (Preliminary), USITC Pub. 1796 (Dec. 1985) at 26, and Certain Welded Carbon Steel Pipes and Tubes from Taiwan, Inv. No. 731-TA-211 (Final), USITC Pub. 1799 (Jan. 1986) at 16. Occasionally, the five factors are described with slightly different language. In Natural Bristle Paint Brushes from the People's Republic of China, Inv. No. 731-TA-244 (Final), USITC Pub. 1805 (Jan. 1986) at 16, these are purported to be "proxies for the injury analysis that Congress has directed the Commission to undertake." (emphasis added).

But, in several more recent cases the five factors are "proxies for the injury that Congress has directed the Commission to undertake." (emphasis added) See, for example, Low-Fuming Brazing Copper Wire and Rod from South Africa, Inv. No. 731-TA-247 (Final), USITC Pub. 1790 (Jan. 1986) at 15, and Dynamic Random Access Memory Semiconductors of 256 Kilobits and Above from Japan, Inv. No. 731-TA-300 (Preliminary), USITC Pub. 1803 (Jan. 1986) at 29.

50/ Iron Construction Castings from Canada, Inv. No. 731-TA-263 (Final), USITC Pub. 1811 (Feb. 1986) at 23.

I reject the notion that one may apply a "proxy," or substitute, for an unambiguous statute that spells out specific criteria -- such as the volume of imports, evidence of price undercutting, price depression or suppression, and other factors that Congress has expressly instructed the Commission to consider. Nor, is it likely that Congress intended for Commissioners to stray far from the specific statutory criteria and to rely in the absence of compelling circumstances on the phrase "all relevant factors" as an invitation to substitute abstract economic models for specific criteria designated in the statute.

2. Underselling "Not Probative"?

Nonetheless, in a series of opinions, several Commissioners among those in the majority in this investigation have indicated that they do not consider some of the statutory criteria relevant or appropriate. Although the statute instructs the Commission to look at price undercutting, 51/ two of my colleagues hold that "evidence of underselling is

51/ At the request of one of these Commissioners on October 3, 1985, the Director of Economics prepared a lengthy memorandum analyzing Title VII causation analysis from an economics perspective. This analysis stresses the difficulties of using pricing data in Commission investigations. See Director, Office of Economics to the Vice Chairman, "Title VII causation analysis, especially underselling and lost sales" in EC-J-010, January 7, 1986.

ordinarily not probative on the issue of causation." 52/ They assert that when imports undersell domestic products, the price differences "are usually explained by differences in the items compared. Rarely will the characteristics of the imported product exactly match those of the domestic product." 53/ A third Commissioner -- also among the majority in this case -- "believes that evidence of underselling should be used only with caution." 54/

52/ Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. No. 731-TA-254 (Final), USITC Pub. 1808 (Feb. 1986), p. 11 One of these Commissioners says elsewhere that "Firms, whether foreign or domestic, generally charge the most they can for their product. As a result, price differentials are usually accounted for by differences in the product or associated services. Thus, 'underselling' based on a comparison of transactions' prices often has no relevant economic content. Price undercutting refers to predatory pricing behavior whereby a firm lowers its prices to drive out competitors in order to gain monopoly power." See footnote 59 in Iron Construction Castings from Brazil, Canada, India, and the People's Republic of China Invs. Nos. 701-TA-249 and 731-TA-262 through 265 (Preliminary), USITC Pub. 1720 (June 1985) at 18.

From my own point of view, this passage contains a number of unsupported assertions about business behavior, pricing and the like which are used to disregard statutory criteria written by Congress and signed by the President.

53/ Certain Welded Carbon Steel Pipes and Tubes from Turkey and Thailand, Invs. Nos. 701-TA-253 and 731-TA-252 (Final), USITC Pub. 1810 (Feb. 1986) at 44.

54/ Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. No. 731-TA-254 (Final), USITC 1808 (Feb. 1986) at 11.

3. Lost Sales "Rarely Determinative"?

With respect to lost sales information -- another criterion familiar to traditional Commission analysis -- the same three Commissioners have stated that "the presence or absence of confirmed lost sales is rarely determinative or persuasive on the question of a causal link between LTFV imports and material injury to the domestic industry." 55/56/

On another aspect of the lost sales question, two of my colleagues even suggest that any attempt to determine whether the domestic industry has lost sales to imports is necessarily biased. They say: ". . . the Commission's sampling method is biased, [emphasis added] e.g., we do not ask how many foreign sales are lost to dor stic producers' sales." 57/ To me, this claim of bias appe to displa confusion about the nature of the International Trade Commission's statutory role. Under U.S. law, the Commission must determine whether U.S. imports injure the domestic industry. Presumably, other countries have

55/ See Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. No. 731-TA-254 (Final), USITC Pub. 1808 (Feb. 1986) at 12.

56/ While the term "lost sales" does not appear in Title VII, 19 U.S.C. 1677(7)(C)(iii)(I) does require the Commission to evaluate a "decline in . . . sales" as part of its impact analysis. Nonetheless, the Court of International Trade has upheld the traditional Commission practice of using lost sales analysis as a signal of imports impacting the domestic industry. The Court says: "Sales lost due to underpricing is an important test of injury in the case of fungible goods." Gifford Hill Cement Company v. U.S., 615 F. Supp. 577, 586 (CIT 1985).

57/ Certain Welded Carbon Steel Standard Pipes and Tubes from Turkey and Thailand, Invs. Nos. 701-TA-253 and 731-TA-252 (Final), USITC Pub. 1810 (Feb. 1986) at 10.

administrative mechanisms, like the ITC, charged with determining whether their own domestic industries have been injured by U.S. exports. And it is not our responsibility to query foreign producers and importers about sales they may have lost to U.S. industries. As noted earlier, the Commission need only determine that imports are a contributing cause of material injury to the domestic industry.

4. Import Volume "Not Useful"?

Nor do some of my colleagues consider another statutory criterion, import volumes, a reliable indicator. Two Commissioners say that "the absolute volume of imports is not a useful indicator of causation," when there are sharp increases in domestic consumption. 58/ I disagree with that point of view. In the present case, ethyl alcohol from Brazil, U.S. consumption has risen steadily, and before the filing of this petition imports climbed sharply both in absolute terms and as a share of consumption. As noted in our earlier discussion, there appears to be a correlation between rising import levels and injury to the domestic industry's profitability. From my

58/ Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. 731-TA-254 (Final), USITC Pub. 1808 (Feb. 1986) at 10. In a memorandum (EC-J-010) circulated on January 7, 1986, at the request of one Commissioner, the Commission Director of Economics concludes that "looking at the level or existence of imports as the cause of injury would not only be inconsistent with the [GATT] Agreement on Interpretation, it would be inconsistent with most of the language of Section 771(7)(C)." See p. 10.

perspective the record of this investigation contains ample evidence to rebut my three colleagues' assertion. In the present investigation, the absolute volume of imports is a very useful indicator of causation.

5. Presumptive Tests?

Another practice emerging in Commission determinations which also appears to lack any statutory basis whatsoever is the use of explicit presumptive tests for weighing the impact of imports. For example, one colleague asserts the presumption "that imports cannot be a cause of material injury if the import penetration ratio is below 2.5 percent. This presumption," she continues, "can be rebutted by a showing that both supply and demand are inelastic." 59/

This requirement that a petitioner must use supply and demand analysis to rebut a presumption that an import penetration ratio below 2.5 percent cannot be the cause of injury would appear to conflict with the intent of Congress as expressed in the legislative history. The House Ways and Means Committee has said:

59/ See footnote 58 in Iron Construction Castings from Brazil, Canada, India, and the People's Republic of China, Invs. Nos. 701-TA-249 and 731-TA-262 through 265 (Preliminary), USITC Pub. 1720 (June 1985) at 18. See also Carbon-Steel Structural Shapes from Norway, Inv. 731-TA-234 (Final), USITC Pub. 1785 (Nov. 1985) at 9. The analytical basis for this presumption, complete with demand and supply curves, is discussed in Certain Welded Carbon Steel Pipes and Tubes from Thailand and Venezuela, Invs. No. 701-TA-242 and 731-TA-252 and 253 (Preliminary), USITC Pub. 1680 (April 1985) at 19-30.

> . . . the petitioner will not be required to bear the burden of proving the negative, that is, that material injury is not caused by such other factors, nor will the ITC be required to make any precise mathematical calculations as to the harm associated with respect to such factors. (emphasis added) 60/

Such a burdensome requirement means that domestic petitioners must use abstract economic theories and models, along with factual data, to help demonstrate that imports are, in fact, injuring them. I consider this an unreasonable and unrealistic requirement. Not only is there no statutory basis for such a presumption but adherence to this practice, in effect, requires each domestic industry seeking relief to hire a consulting economist, thus adding to the costs of all parties -- domestic and foreign -- to our proceedings. In addition such an approach makes it more difficult for very small firms with limited financial resources to rely on trade remedies to offset dumped or subsidized imports. 61/

6. Inconsistent Margins Analysis?

Another issue that comes up frequently in Commission opinions discussing causation is margins analysis. 62/ Three members of the Commission majority in the present investigation presume that with an "extremely low dumping margin" from the

60/ House Ways and Means Committee, Trade Agreements Act of 1979, p. 47.

61/ Congressional concerns regarding the availability of U.S. trade laws to small businesses were the focus of the 1984 amendments to the Tariff Act of 1930. 19 U.S.C. 1339.

62/ In a memorandum (EC-J-010) circulated on January 7, 1986, at the request of a colleague, the Commission's Director of Economics appears to encourage the use of margins analysis. He says: "And if Title VII [of the Trade Agreements Act of 1979] is consistent with the GATT, then the Commission must consider the dumping margin or the level of the subsidy in making its injury determination." See p. 26.

Department of Commerce, "a very special set of circumstances would have to exist in the domestic market for imports to cause injury to the domestic industry." 63/ Consequantly, they use the low dumping margin as a reason for a negative determination.

But, when the dumping margin is "extremely large," no opposite presumption prevails. Frequently, in such circumstances as the present, where a dumping margin approaches 100 percent, these colleagues appear to ignore the implications of margins analysis altogether and reach for an alternative rationale for a negative determination. It is certainly arguable that with a 98.8 percent dumping margin that "a very special set of circumstances would have to exist in the domestic market for imports" not "to cause injury to the domestic industry." 64/65/66/

63/ Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. No. 731-TA-254 (Final), USITC Pub. 1808, at 14.

64/ It is generally known that I do not favor the practice of examining margins. My latest discussion of this subject appears in Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. 731-TA-254 (Final), USITC pub. 1808 (Feb. 1986) at 28-29. Former Vice Chairman Michael J. Calhoun offered a profound criticism of margins analysis in Certain Steel Wire Nails from the Republic of Korea, Inv. No. 701-TA-145 (Preliminary), USITC Pub. 1203 (March 1982) at 15-22.

65/ Indeed, based on CIT's discussion in The Maine Potato Council v. The United States, 613 F. Supp. 1237, 1242 (CIT 1985), there would appear to be considerable question about whether the Commission has any authority under the statute even to consider the size of margins in making its determination. The Court cites the colloquy on the floor of the House which suggests that Congress did not confer authority on the Commission to base determinations on the subsidy level or dumping margin. In that colloquy Chairman Sam Gibbons told a colleague that he, Congressman Ed Jenkins,

(Footnote continued on the next page.)

65/ (Continued)
"is correct" in believing that certain language in the Trade and Tariff Act of 1984 does not give the Commission authority to base its decisions on the dumping margins or subsidy levels. 96 Cong. Rec. H7908-09 (July 26, 1984).

66/ When dumping margins are large, the advocates of margins analysis sometimes overlook this fact, and find other reasons for a negative determination. For instance, in a recent cellular mobile telephone case, the Department of Commerce found dumping margins of between 88 and 107 percent for major Japanese electronics firms. A Commissioner who frequently employs a five-step analysis, which includes dumping margins, made no mention of this subject in a negative determination. See Cellular Mobile Telephones and Subassemblies Thereof from Japan, Inv. No. 731-TA-207(Final), USITC Pub. 1786 (Dec. 1985) at 22-34. The same occurred in oil country tubular goods from Spain where dumping margins were between 70 and 83 percent. See Oil Country Tubular Goods from Argentina and Spain, Inv. 731-TA-191 and 195 (Final), USITC Pub. 1694 (May 1985), especially at 19-21. However, in a recent photo album case where Korean producers were assigned 64.81 percent dumping margins, the same Commissioner did cite the high margin of dumping as a basis for an affirmative determination. See Photo Albums and Photo Album Filler Pages from Hong Kong and the Republic of Korea, Inv. No. 731-TA-240 and 241 (Final), USITC Pub. 1784 at 19-20.

7. Profitability "Suspect"?

Revisionism does not stop with causation analysis. It now extends to injury analysis. Where the issue of material injury is pivotal to the disposition of a countervailing duty or anti-dumping investigation, some Commissioners display a similar enthusiasm for substituting proxy tests, theoretical presumptions, and complex economics models for plain statutory language. Indeed, the trend toward revisionism, in which Commissioners substitute their own tests for the statute, has gone so far that even a domestic industry with negative gross profits is presumed not to be experiencing injury by some Commissioners. In a recent pipe-and-tube investigation, according to my colleagues in their written opinion, negative profits must be biased because "sustained negative gross profits are not rational for a firm. Continued production is not rational when revenues are less than variable costs." 67/ To me, such a statement implies that if firms are losing money, they do not deserve to exist, even though dumped or subsidized imports are a cause of that material injury. Obviously, I disagree, and find nothing in the statutory language or legislative history to justify such a position.

67/ Certain Welded Carbon Steel Pipes and Tubes from Turkey and Thailand, Invs. Nos. 701-TA-253 (Final) and 731-TA-252 (Final), USITC Pub. 1810 (Feb. 1986) at 39.

Perhaps I am misreading my colleagues' analysis, and thus misinterpreting the outcome of recent cases. However, the net effect of some of my colleagues' reasoning has been to discard the carefully crafted statutory tests and to revise the law by administrative fiat. In my view the Commission's statutory findings cannot and should not be made by improvising a host of dubious, arbitrary, and illegitimate analytical techniques, such as "proxies," "presumptive tests," and "elasticities," to rationalize negative determinations. The statute is generally clear, and those of us charged with administering it have no business substituting academic fictions for the factual record and our own judgment.

Since the Trade Agreements Act of 1979 was implemented, most Commissioners have tried to administer our trade laws with fairness and impartiality. From time to time our reviewing courts may have disagreed with individual Commission decisions, but the Commissioners generally have worked diligently and in a nonpartisan manner to apply the law as it was written by Congress. And from this sensitivity to statutory construction and legislative intent has emerged an extensive corpus of case law that establishes a transparent framework for the predictable administration of our trade laws.

To me the new revisionism is a threat to the fairness, predictability, and integrity of our trade law system. In devising substitutes for the statute, the revisionists offer the parties only proxies, presumptions and abstractions, not

the certainty of consistent statutory interpretation. Parties -- both domestic and foreign -- cannot be sure what factors will be dispositive when statutory standards are explained away, bent, or simply disregarded.

In closing, it is appropriate to call my colleagues' attention to the recent Court of Appeals for the Federal Circuit opinion sustaining the Commission's determination in American Lamb Meat. In this decision our reviewing court addressed the issue of how the Commission and the courts might best determine congressional intent. The court said succinctly: "We begin with the best source of congressional intent, the statute. . . ."(emphasis added). 68/

68/ American Lamb Company v. the United States, slip opinion, p. 16.

Mr. PEASE. Thank you, Mr. Schagrin, for raising this issue, and I have a great concern about what is going on with a minority of the members at the International Trade Commission.

Mr. JENKINS. Once again, I want to thank the entire panel for your testimony.

Our next panel is John Cavanagh, cochair, International Labor Rights Working Group; Pharis Harvey, cochair; and Holly Burkhalter, Washington representative, Americas-Helsinki-Asia Watch.

Good morning. Your entire statements will be made a part of the record. You may summarize your statements as you desire, and we will commence with Mr. Cavanagh.

STATEMENT OF JOHN CAVANAGH, CO-COORDINATOR, INTERNATIONAL LABOR RIGHTS WORKING GROUP, AND FELLOW, INSTITUTE FOR POLICY STUDIES

Mr. CAVANAGH. Members of the subcommittee, my name is John Cavanagh. I am a fellow at the Institute for Policy Studies, and cocoordinator of the International Labor Rights Working Group, a coalition of individuals from the human rights, labor, religious and research communities, who are concerned with the erosion of workers' rights in both the Third World and the United States.

We are convinced that this erosion in different parts of the world is interrelated and that U.S. positions on trade are central to ameliorating the situation in a fashion that reinforces the democratic aspirations of peoples everywhere.

The aspect that I will focus on in my oral testimony is our conviction that the violation of workers' rights in numerous Third World nations has become one of the most flagrant causes of unfair trade practices that our Nation faces today, dwarfing in significance the many subsidies and other economic advantages that foreign governments often place on goods exported to this country.

In an increasingly competitive world market, governments often use labor repression as a prime mechanism to gain market shares.

The following episode is not atypical. Mattel Corp. decides that it no longer wishes to manufacture dolls in the United States, as it can get cheaper labor overseas and Government guarantees of a docile labor force, and it moves its plants into Mexico across the border, where wages are a fifth of U.S.-levels and workers in the plant form a union and fight to achieve and win their basic workers' rights.

Mattel decides to move to Korea. The same action occurs in Korea. Mattel picks up the factory and moves to the Philippines, and here the Philippine Government promises even cheaper labor, one-tenth U.S.-levels, a prohibition on strikes and union activity, and the ability to lock workers into the factory for forced overtime when needed.

The women who work in the factory cannot even afford to buy the Barbie dolls which they produce day in and day out.

This is a true story, and the latest chapter occurred last year when the tax holiday ran out in the Philippines, and the Government of Thailand offered even cheaper wages and its own form of tax holiday, and Mattel accepted.

How are U.S.-based doll manufacturers supposed to compete without reducing workers' conditions to these Third World levels, and what about the workers in Mexico, Korea and in the Philippines, who have lost their jobs because they attempted to exercise the basic labor rights that almost all nations agree in theory should be afforded to their workers?

Up to the present, the remedies proposed to our trade ills are akin to Band-Aids applied to festering wounds. No one is asking the obvious question, how can the United States possibly win a trade war against countries like China and Korea, where wages and working conditions are way below those prevailing in the United States, and where U.S.-corporate subsidiaries have rapidly narrowed the technological gap with the United States.

The simple answer is that we cannot, not without substantially altering the terms of the debate. Briefly, I think there is another choice, but only if we move beyond abstract discussions about free trade, and carefully examine what is behind the rapidly growing integration of the global economy, who benefits and who pays?

At the heart of a trade policy promoting economic justice abroad and at home should be an expansion of the definition of unfair trade practices in U.S. trade law to include labor repression, specifically involving section 301 of the Trade Act of 1974.

As you and this subcommittee reassess the needs of the United States in crafting a new trade bill, and particularly as you reassess the concept of unfair trade practices over the next few days, I would ask you to consider the following monumental changes in the world economy.

Simply put, U.S. corporations now can move capital and technology around the globe with very little regard for national boundaries.

Workers, however, remain largely stationary and bound by their laws and personal allegiances. This economic fact of life about American-based multinational corporations to transfer production from the United States to countries lacking even the most rudimentary labor rights.

The dynamics of global production in the eighties undercuts the rights of all workers, and in particular, they combine to diminish the rights of American workers to the lowest common international denominator.

The U.S. Bureau of Labor Statistics confirms that hourly compensation for manufacturing production workers, in 1984, in Korea, Taiwan, and Brazil were 11, 13, and 10 percent, respectively, of their American counterparts, and even in Japan, the country with whom we have the largest trade deficit, hourly compensation levels were only 50 percent of U.S. levels.

Clearly, we have entered a new era in which the United States should use its far-reaching economic leverage to insist upon changes in the international trading system that will spread the benefits of trade to those who produce the goods and services.

Now, I think in essence, new policies need to tackle this most unjust yet least talked about unfair trade practice, the cheapening of exports to the United States through the exploitation of workers.

Numerous unions protest unfair trade subsidies and the dumping of low-priced goods into the American market, and the same outcry

should be heard and acted upon in protest of what we might call social dumping, unfair competition from foreign workers whose low wages and absence of basic workers' rights result from their being denied any of the basic rights which workers in this country and in other countries, in particular in Europe, have gained.

Finally, some encouraging steps you and this subcommittee know have already been taken in U.S. Government circles that suggest movement toward better use of American economic power in international trade and investment.

The Trade and Tariff Act of 1984 does include provisions that condition foreign countries duty-free access to the American marketplace upon respect for basic labor rights within each of these countries.

This legislation, crafted initially by your subcommittee, requires the State Department, in consultation with the Labor Department, to submit annual reports on labor rights in each country, a process which we are very happy to see has begun this year.

Last fall, the labor rights battle spread to another domain, and that is, Congress adopted a proposal to prohibit the Overseas Private Investment Corporation, OPIC, from extending risk insurance for overseas projects of U.S. multinational corporations in countries that have failed to adopt and enforce laws to protect the same internationally recognized workers' rights.

Such initiatives can form the cornerstone of a new trade policy offensive that combines concern with economic justice at home with the advancement of workers' rights and development overseas.

The leadership of this subcommittee in linking U.S. trade policy with respect for workers' rights has been a bold and timely response to the rapidly changing pattern of world economic relations.

We encourage you to continue that leadership as you reconsider the scope of unfair trade practices.

[The prepared statement follows:]

STATEMENT OF JOHN CAVANAGH

Fellow, Institute for Policy Studies
Co-coordinator, International Labor Rights Working Group

Mr. Chairman, members of the subcommittee.

My name is John Cavanagh. I am a fellow at the Institue for Policy Studies and co-coordinator of the International Labor Rights Working Group, a coalition of individuals from the human rights, labor, religious and research communities who are concerned with the erosion of workers' rights in both the Third World and the United States. We are convinced that this erosion in different parts of the world is interrelated and we are convinced that U.S. positions on trade are central to ameliorating the situation in a fashion that reinforces the democratic aspirations of peoples everywhere.

The aspect that I will focus on in my testimony is our conviction that the violation of workers' rights in numerous Third World nations has become one of the most flagrant cases of unfair trade practices that our nation faces today, dwarfing in significance the many subsidies and other economic advantages that foreign governments often place on goods that they export to this country.

In an increasingly competitive world market, governments use labor repression as a prime mechanism to gain market shares. The following episode is not atypical. Mattel corporation decides it no longer wishes to manufacture dolls in the U.S. as it can get cheaper labor overseas as well as government guarantees of a docile labor force. It moves its plant across the border into Mexico where wages are a fifth of U.S. levels. Workers in the plant, however, form a union and fight to achieve basic workers rights. Mattel decides to

move to Korea.

The same action occurs in Korea. Mattel picks up the factory and moves to the Philippines. Here, the Philippine government promises even cheaper labor, a tax holiday of eight years, a prohibition on strikes and union activity, and the ability to lock workers into the factory for forced overtime when needed. The women who work in the factory cannot even afford to buy the Barbie dolls that they produce day in and day out.

This is a true story. The latest chapter occurred last year when the tax holiday ran out in the Philippines. The government of Thailand offered even cheaper wages and its own form of tax holiday. Mattel accepted.

How are U.S.-based doll manufacturers supposed to compete without reducing workers' conditions to these Third World levels. And what about the workers in Mexico, Korea and the Philippines who lost their jobs because they attempted to exercise the basic labor rights that almost all nations agree in theory should be afforded their workers.

Up to the present, the remedies proposed to our trade ills are akin to bandaids applied to festering wounds. No one is asking the obvious question: how can the United States possibly win a trade war against countries like China and Korea, where wages and working conditions are way below those prevailing in the U.S. and where U.S. corporate subsidiaries have rapidly narrowed the technological gap with the United States. The simple answer is that we can't, without substantially altering the terms of the debate.

There is another choice, but only if we move beyond hackneyed, abstract discussions about free trade and carefully examine what is behind the rapidly growing integration of the global economy, who benefits and who pays. At the heart of a trade policy that promotes economic justice abroad and at home should be the end to trade and investment incentives that encourage countries and corporations to exploit labor and export cheap to the United States. At its heart should be an expansion of the definition of unfair trade practices in U.S. trade law to include labor repression.

The time for action is now. Consider the recent record. China led the pack in export growth to the United States between 1980-1984, at 191 percent, followed by South Korea and India (126 percent), Taiwan (119), Singapore and Brazil (108), and Japan (83). Between 1972 and 1984, foreign imports as a percent of the U.S. market have jumped in almost every category: dolls (from 22 to 55 percent); radios and TVs (35 to 58), men's shirts (18 to 46), handtools (8 to 23), shoes (17 to 50), and semiconductors (12 to 30 percent). When imports jumped 26 percent from $269 to $341 billion in 1984, American Express estimated U.S. jobs lost at 1.8 million.

As you in this subcommittee reassess the needs of the U.S. in crafting a new trade bill, and particularly as you reassess the concept of unfair trade practices over the next few days, I ask you to consider the following monumental changes in the world economy. Theyare changes, I would argue,

which call for a transformation of the way we view labor rights and trade.

Over the past two decades corporate developments, the debt crisis, and the dollar debacle have changed the rules of the trade game. During the first two decades after World War II, the American economy was largely self-reliant. It grew by leaps and bounds with no real limits in sight. Most Americans saw their standards of living rise steadily as part of the general prosperity. American industries and manufacturing workers--producing primarily for the domestic marketplace--were not threatened by imports per se. Collective bargaining contracts routinely provided sizeable increases in wages and iron-clad cost-of-living adjustments (COLAs) to offset the effects of inflation. Free trade was a high-sounding principle of esoteric interest, irrelevant to the day-to-day concerns of most Americans.

From the early 1960s to the present, the American position in the global economy changed dramatically. Our easy access to critical raw materials at cheap prices disappeared. U.S. exports did not keep pace with the flood of imports pouring into the American marketplace, many coming from overseas subsidiaries of U.S. corporations.

American business, labor and government leaders were not prepared for the onslaught of foreign competition on American markets. In just the last five years, a U.S. trade surplus in 1980 gave way to a trade deficit of $150 billion in 1985.

All across America, scores of communities, hundreds of industries, and millions of workers have been ravaged by the

resulting economic dislocation. It is proving very painful and costly to come to terms with the new dynamics of international trade. Not only has the United States lost its economic predominance, but it is now apparent that many American consumers prefer foreign-made products. Adding to the shock, President Reagan is the first president in the postwar era to deny flatly that the federal government has any particular obligation or constructive role to play in helping thousands of American workers and firms adversely affected by the ongoing surge of imports.

The major gainers in these shifts are U.S.-based multinational corporations which have engineered the global factories whose various wings account form a rapidly growing share of world trade. These factories market finished products from standardized parts manufactured in plants located in several different countries. Recent advances in transportation (e.g. containerization), communication (e.g. satellite telecommunication systems) and information systems (e.g. microcomputers) have greatly enhanced the ability of multinational corporations to take advantage of international wage differentials.

As capital and technology continue to move around the globe with little regard for national boundaries, workers remain largely stationary and bound by national laws and personal allegiances. This economic fact of life allows American-based multinational corporations to transfer production from the United States to countries lacking rudimentary labor rights. The dynamics of global production

in the 1980s undercuts the rights of all workers. In particular, they combine to diminish the rights of American workers to the lowest common international denominator.

The U.S. Bureau of Labor Statistics confirms that the hourly compensation for manufacturing production workers in 1984 in South Korea, Taiwan, and Brazil was 11, 13, and 10 percent respectively of their American counterparts. Even in Japan, the country with whom we have the largest trade deficit, hourly compensation levels were only 50 percent of U.S. levels.

Put another way, how can American factories and workers hope to compete with their Taiwan counterparts? Workers in assembly plants in Taiwan receive bare subsistence wages for eight to twelve-hour days. They commonly live in crowded company-owned dorms with no air conditioning in 100 degree heat and high humidity, no potable water, no recreational facilities, and no social activities. Health and safety regulations are lax or nonexistent, even where workers handle hazardous products.

Strikes are illegal under martial law, which has been in effect since 1949. Although a collective bargaining statute is on the books, there are no collective bargaining agreements in effect. Inciting labor unrest is punishable by death. The Ministry of the Interior appoints union leaders within enterprises and plant managers often control the collection of union dues in order to supplement government and company coffers, while distributing official propaganda through union channels.

Piecemeal protectionism in the United States is totally inadequate to stem the flood of cheap goods from such factories. There is yet another enormous problem with the protectionist approach: it flatly contradicts U.S. policy on the growing international debt crisis. Third World countries that have accumulated over $970 billion in debt have been told by U.S. banks, government officials and the International Monetary Fund that in order to obtain new loans to repay the old ones, they must export more and import less. This message has been quite forcefully sent to Brazil, Mexico, Korea and about 50 other debt-ridden countries.

Most have responded by creating large trade surpluses, surpluses that can only be maintained if there are markets for their shoes, steel and apparel. A rapid rise in U.S. protectionism threatens to make the debt sqeeze unmanagable in several countries.

We have entered a new era in which the United States should use its far-reaching economic leverage to insist upon changes in the international trading system that will spread the benefits of trade toward those who produce the goods and services. Similar public policy reappraisals are needed with regard to the extension of risk insurance for multinational corporations, international lending activities, and special tax benefits.

Rather than a flood of retaliatory protectionist measures, the United States badly needs trade and adjustment policies that address the monumental changes in the world economy. These would include controls on corporations'

ability to shift capital with ease out of the country, and incentives to shift capital and labor in the United States into higher value added and competitive sectors. A positive role for the U.S. government in such a large-scale shift is obviously crippled by the requirements of Gramm-Rudman and by the diversion of increasingly scarce government research and development funds into dubious Star Wars research.

Such policies imply greater government involvement in softening the blow of capital shifts on workers and communities. Thousands of Americans have lost their jobs in basic industries (steel, auto, rubber, electronics, etc) to foreign competition in recent years and have been denied means to re-equip themselves to find new jobs.

Finally, new policies need to tackle the most unjust yet least talked about "unfair trade practice": the cheapening of exports to the U.S. through the exploitation of workers. Numerous U.S. industries and unions protest unfair trade subsidies and the "dumping" of low-priced foreign goods into the American market and elsewhere. The same outcry should be heard and acted upon in protest of "social dumping"--unfair competition from foreign workers whose low wages result from their being denied the free exercise of basic labor rights.

The rights of American workers will be more secure and U.S. competitiveness will be improved by an aggressive, coordinated strategy to extend basic labor rights to workers in all of the countries that challenge us in the global marketplace.

Promoting international respect for basic labor rights is also crucial to the development process. The denial of labor rights in developing countries perpetuates poverty, limits the benefits of economic development to privileged elites, and sows the seeds of social instability.

In the near-term, anti-labor policies may profit some companies that use cheap labor overseas to produce low-priced goods for export to developed countries. Echoing the sentiments of the robber barons of the 19th century who denied basic labor rights to American workers, many corporate apologists argue that many workers in developing countries are far better off working for a dollar per day than they would be not working at all. But this exploitation of labor inhibits the development of self-reliant local economies in much of the developing world. By restricting workers income and purchasing power, too many multinationals and host governments are severly limiting the growth of internal consumer markets. It is as true overseas as it is here that money in the pockets of working people creates demand for goods and services which creates jobs.

As yet little noticed, some encouraging steps are being taken in U.S. government circles that suggest movement toward better use of American economic clout in international trade and investment in support of economic justice for all workers at home and abroad. The Trade and Tariff Act of 1984 includes provisions that condition foreign countries' duty-free access to the American marketplace upon respect for basic labor rights within each of the countries.

Crafted initially by your subcommittee, these provisions also require the State Department, in consultation with the Labor Department, to submit annual reports on labor rights in each country. These reports to the Congress detail the status of "internationally recognized worker rights" as defined in the 1984 Act (freedom of association, right to organize and bargain collectively, prohibition of forced labor, minimum age of employment, and acceptable conditions with respect to minimum wages, hours of work, and occupational safety and health). Finally, the new law creates the means for any person or organization to bring evidence before the U.S. government that the abuse of labor rights in any country should eliminate it from receiving preferences. Several human rights groups and trade unions have already submitted reports challenging the continuation of trade preferences for South Korea, Taiwan, the Philippines, Chile, Haiti, Zaire, and other countries.

Last fall the labor rights battle spread to another domain. Congress adopted a proposal to prohibit the Overseas Private Investment Corporation (OPIC), a government agency, from extending risk insurance for overseas projects of U.S. multinational corporations in countries that have failed to adopt and enforce laws that protect the same internationally recognized worker rights. Congress passed the new labor rights language despite opposition from both the Reagan Administration and multinational corporations.

Such initiatives can form the cornerstone of a new trade policy offensive that combines concern with economic justice

at home with the advancement of workers rights and development overseas. Support can be expected from communities in the American "rustbelt," human rights groups, and the range of organizations that understand the importance of development and an end to poverty in the Third World both for those populations and for world peace. Labor unions, increasingly aware that protectionism's protections are short-term at best, are adding their support. Another ready constituency are those smaller domestic firms producing everything from apparel to metal castings that lose ground daily to foreign imports.

The leadership of this subcommittee in linking U.S. trade policy to respect for workers rights has been a bold and timely response to the rapidly changing pattern of world economic relations. We encourage you to continue that leadership as you reconsider the scope of unfair trade practices.

Mr. JENKINS. Pharis Harvey.

STATEMENT OF PHARIS J. HARVEY, CO-COORDINATOR, INTERNATIONAL LABOR RIGHTS WORKING GROUP, AND EXECUTIVE DIRECTOR, NORTH AMERICAN COALITION FOR HUMAN RIGHTS IN KOREA

Mr. HARVEY. I am the executive director of the North American Coalition for Human Rights in Korea, and with John Cavanagh, the co-coordinator of the International Labor Rights Working Group.

I have spent the past 29 years working in Asia or in Asia-related organizations, much of that work focused on the issue of economic justice.

It is a pleasure to address this committee on the important topic of international labor rights and trade. Few efforts to cope with the serious trade problems of the United States have so rightly addressed the plight of the American worker as Congressman Pease's proposed amendment to declare labor repression an unfair trading practice, in H.R. 4412.

It is right for several reasons. First of all, it recognizes that American workers are being pitted against foreign workers in a system which is destroying the rights of both, by undermining their ability to protect a safe working environment and a decent and livable wage through either collective bargaining or the enforcement of legal standards.

Second, it is right because it has universal application. Unlike some other trade remedies being proposed, it penalizes no nation simply for having succeeded in trading with the United States.

Rather, it penalizes those who base their competitive advantage on the suffering of their own people and sustain that suffering by the blunt instruments of military and police power.

Third, it is right because, unlike yet another group of proposed trade remedies, it does not attack foreign competition simply on the basis of lower wages. Wages are, of course, set by many factors, including general economic level, cost of living, labor availability, skills, et cetera.

What Mr. Pease's proposal attempts is to remove from that equation the factor of political repression, to allow the economic factors to function without being artificially repressed at the point of a gun.

If it often assumed that labor rights are a function of general economic development, that protection of workers' rights gradually improves with increases in GNP. However, the Asian experience is rather different.

Some of the poorest countries in Asia have good and well-enforced labor laws and well-functioning labor unions. The most serious abusers, on the other hand, are the moderately wealthy export-driven industrializing economies such as South Korea and Taiwan.

Labor abuse appears to be primarily a function of a type of development, not the level. And it appears to be the product of specific Government decision to suppress wages, and a domestic consumer market, for the sake of lowering export costs.

Like many other governmental aids to exporters, it is clearly a form of dumping, social dumping. Countering this trend is in the interest of the United States on at least three grounds:

One, our foreign policy goal of strengthening democracy and protecting human rights requires our concern. Two, strengthened consumer markets for U.S. goods requires better distribution of income in our trading partners, especially those, such as Korea, which enjoy a trade surplus of several billions of dollars with the United States.

Three, enhanced labor rights in Korea and other industrializing countries lessens the temptation of American companies to flee our shores for reasons of avoiding unionized labor, thus helping to protect American communities from some of the ravages of rapid industrial decline.

In detailing the relation between export production and labor repression, let me limit my remarks to South Korea, which has penetrated the U.S. market in cheap labor-intensive goods so successfully in recent years based on this strategy, and is now selling us heavy industrial goods such as automobiles and tractors, still based on a cheap wage strategy dependent for its success on political suppression of workers' rights.

In 1961, when General Park Chung Hee staged a military coup to overthrow the democratic government of Prime Minister Chang Myon, his justification was the need for discipline for economic development.

His first act was to abolish the free trade union movement and establish in its place a government-dominated organization, the Federation of Korean Trade Unions, which continues today to be the only legal labor federation.

Labor laws were then amended to outlaw strikes in the name of national security. An urban labor pool was created by a combination of agricultural policies that drove people off the farms and cheap food for urban workers provided in those years by the United States' Public Law 480 program.

In 1965, the normalization of relations with Japan reintroduced Japanese capital into Korea and established a three-way trade relationship with the United States that continues to this day.

Japanese companies, in partnership with Korean business, carry out the pollution-intensive or labor-intensive aspects of production in Korea where labor is restricted and pollution laws are either nonexistent or nonenforced, for the sake of exporting primarily to the United States market; 35 percent of South Korea's exports in 1985 were to the United States.

The structural character of that arrangement can be seen easily in the trade deficits respectively that South Korea has with Japan and the United States with South Korea. In 1985, Korea's deficit to Japan was as about $3 billion, the United States deficit to Korea about $4.3 billion.

During the first 2 months of 1986, Korea's trade deficit with Japan was $723 million, its surplus with the United States was $775 million. That balance has been roughly maintained for a decade.

These facts suggest that the economic miracle of Korea is in large measure an extension of the economic penetration by Japan

into United States markets. What Korea provides for Japanese—and United States and Korean—business is a political climate that controls the cost of labor by direct and brutal suppression.

In 1972, the logic of repression for the sake of economic growth resulted in martial law, and under its cover, a new dictatorial constitution. Hundreds of workers, ministers and human rights advocates were imprisoned and tortured for challenging this deprivation of rights.

However, despite Draconian controls on labor organizing, the latter half of the 1970's saw the resurgence of local union activity, largely under Catholic and Protestant auspices, which led to a number of dramatic confrontations between police and workers, most of whom were women.

In 1979, one such confrontation triggered the events that led directly to Park Chung Hee's assassination.

Following his bloody coup in 1980, General Chun Doo Hwan further decimated the labor movement by altering the labor law to radically restrict the rights to organize and bargain collectively, and by directly forcing the resignation of over 300 national and regional labor union officials.

Hundred of local union leaders were fired from their jobs, many imprisoned or sent to purification camps. FKTU membership fell more than 30 percent in 1 year, and even today, 6 years later, has not recovered its 1979 level of 1.1 million workers.

During the next 3 years, all remaining active local unions were destroyed, by physical force in many instances, and their places taken by management and government-controlled unions, or labor-management councils under the control of management.

From 1984, new labor organizing began, largely outside of and without the help of the national labor federation. A new wave of repression followed in 1985, leading to the imprisonment of more than 100 union officials and the forced firing of hundreds more.

Major labor strikes in the taxi industry in Taegu, in the Kuro industrial complex in Seoul, and the Daewoo automobile factory in Inchon sparked this Draconian reaction, which is still underway.

The desperation of South Korea workers was vividly illustrated last month when a worker at the Shinhung Precision Co., a Seoul manufacturer of writing instruments, committed suicide by self-immolation to protest the police and management suppression of the company's workers' effort to secure a wage increase from the current 3,080 won—$3.45—for a 12-hour day, which is less than 40 percent of the government's estimate of minimum cost of living.

When the police stole his body from a local hospital and cremated it to prevent a family funeral, the character of the South Korean police state was made all the clearer.

While the Chun government insists that only a handful of workers are earning wages below the minimum cost of living—$200 a month—statistics published in the Korean press last month suggest a much more serious problem.

Of South Korea's 4.1 million industrial workers at firms with five or more employees, 30 percent earn less than the $200 per month the government indicates as a minimum living cost and 20 percent less than $120 per month.

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Unemployed and underemployed workers are estimated to total 2 million persons, about 18 percent of the workforce.

Furthermore, the percentage of temporary employees as a portion of the workforce is growing rapidly. In 1983, 32 percent of Korea's workers were hired on a daily and temporary basis. In 1985, that rose to 37.3 percent.

This marks a serious deterioration in the Korean economy, which has dangerous implications for the country's political and social stability as well.

One could continue at considerable length to document labor rights abuses in South Korea. However, the State Department Country Report for 1985 has rather adequately indicated the problem, and testimony submitted to the U.S. Trade Representative last year by a number of trade unions and human rights groups has amplified that information.

Let me simply update this information by appending to this testimony a report received last week from the Catholic Church in the Inchon, South Korea area, about the current wave of repression of labor.

I would like to conclude my remarks by indicating my belief that the legislation Mr. Pease has proposed could have a salutary effect on labor rights in Korea as well as in other Asian countries that have sought to penetrate U.S. markets by repressing prices by repressing workers.

If the U.S. market is important to them, adjustments will be made, and other factors beside human misery will be found to maintain a competitive position.

Regarding the issue of enforcement mechanisms, we favor the use of a range of measures, such as countervailing duties, orderly marketing agreements or industry-specific limitations, rather than the sweeping deprivation of MFN status for labor rights violating countries, expect in the most extreme instances.

We believe that gives the President more flexibility to negotiate genuine improvements in the situation of overseas workers, and the capability to respond more specifically to injuries to American workers in particular industries targeted for penetration through unfair labor repressive strategies.

This bill is not a quick fix for American trade problems. It is not a substitute for other short-term measures that may be necessary. But it is an important, historically significant first step toward a system of trade that protects workers from unfair exploitation and competition in the same way that current law protects domestic producers.

At the same time, it should provide a strong incentive to countries like South Korea that desire increased access to U.S. markets, to earn that access by giving their own workers their internationally recognized rights. We strongly urge your support. Thank you.

Mr. JENKINS. Thank you very much, Mr. Harvey.

[The prepared statement was read. An attachment follows:]

REPORT ON RECENT LABOR INCIDENTS MARCH 1986

THE LABOR MOVEMENT HAS BEEN ACCELERATED BY THE GENERAL DEMAND FOR INCREASING THE WAGE WHICH HAS BEEN A SIGNIFICANT AND BASIC TARGET OF THE WORKERS OF THIS SPRING. SINCE THERE HAVE BEEN A NUMBER OF WORKERS' STRIKES AND DEMONSTRATIONS, THE CONTROL AND REPRESSION OVER THE WORKERS MOVEMENT HAVE BEEN REINFORCED.

Workers' resource Centre of In Cheon UIM

Workers' resource Centre has served for the need of workers. The staff in the centre have been often interrogated, tortured and arrested without any judical process. On February 26, Kyeong Ki Do Police Headquarter and KCIA came to the centre with a seizure and search warrant and they have taken all the documents, hooks and resources, which is full amount of the portion of one truck. About 50 policemen surrounded the centre and about 20 plain-clothes policemen entered the office. They broke the documents' cabinets, took allthe papers and brought 3 staff members with them. In the process of interrogation, they used so dirty words to the staff and physical and sychological tortures were given to them. After the interrogation, they were released. The reason of the police to issue the warrant was that Young Su Min, a suspect person under the National Security Law, kept 20 copies of 'Basic discernment and organic line on Revolution' writen by himself in the centre.

After the seizure and search, the illegal arrestment and interrogation were continued that obviously shows so repressive labor policy of the prewent government and their obvious supression on the labor mission.

On the 28th, the In Cheon UIM planned to hold a prayer and countermeasure meeting on the case but the planned meeting was violently stopped by the police force and a chairmen and one member of Ecumenical Young Christian, who were in charge of producing the background paper and statement were arrested. Therefore the participants of the meeting decided to have a sit-in demonstration. The countermeasure committee was formed and the committee conducted the prayer meeting from the 3rd to 9th of March. On March 9, the last day of the prayer and 13th day of the demonstration, there attempted to launch a peaceful march. It was also blocked by the police force using the tear gass and violence. Secretary Jeong Taek Kim and 5 other members of the In Cheon UIM were taken to the police station. The participants of the prayer decided to continue the demonstration until the 6 would be released. On the 11th of March, all of them were released but two of them were still under the charge without restraint.

Besides the Workers' Resource Centre case, on the 27th of February, 1,000 women workers of Ih Seong Electronics in In Cheon had a street-demonstration demanding for the achievement of the wages for the basic life and improvement of the working condition. They marched to the factory headquarter. The violent police clamped down the demonstration using so brutal violence

Ban Wol Industrial Zone

Ban Wol has been industrialized since the late 70s and the heavy chemical is main industry. At the moment ther are about 600 factories with 50,000 workers. Low wage, longer hour working, bad working condition, closedown of the factory, etc are very common in the zone and, as like the other area, the repression on the labor movement is going on.

1. Pacific Corporation

Pacific Corporation, producing toys and galments, has wafe of W2,600 per day, no holiday, 11 - 12 hours of working per day and 2 ro 3 times of extra work without extra payment for every week. One day-off deducts 3 days' wage. Those workers gathered for the discussion on the improvement of the working condition were expelled. 7 workers were expelled through 3 times and those who protested against the uniust fire were beaten by the 10 company officials and they had to receive 2 weeks of medical treatment as a result.

2. Gae Yang Electric Company

On the 21st of January, Gae Yang Electric company fired those two workers who protested for the unpaid wage. These two continued to protest submitting a pettition letter to the An Yang Labor Department office and showing up to the factory. Inspite of their just and legal protest, the police brought time to the offhand court.

3. Han Kuk Electronics

Han Kuk Electronics did not pay pention and did not give monthly and yearly holiday. The company has not kept the labor law. The worker who demand for the just treatment was expelled.

4. Won Gok Catholic Church

Won Gok Catholic church has operated the Chinese class for the workers. The class has been interupted by the policd without proper reason. The police made a name list of the teachers and the students who are workers. Finally the police surrounded the church and brought the teachers and the workers for the interrogation using severe tortures. Those workers who studied in the class lost their job so that the normal operation of the class is now facing difficulty.

5. Won Gok Methodist Church

Won Gok Methodist church has operated the Chinese class and the Cultural class for the workers. The Police has been threatening the owner of the building to cancel the contract with the methodist church on rent. The police also made a name list of the workers who participated in the class and has forced the factory to expel them.

* THE EXPELLED WORKERS IN BAN WOL AREA

The 8 expelled workers in Ban Wol industrial zone occupied the office of the New Democratic Party, the opposition party demanding for the just policy during the national election period (February 12). Since the Party did not fulfill the demand of the workers, they dispersed phamplet revealing the repressive policy on the labor problem to the citizen. Police, military police and the plainclothes police were imposed into the building with fire cart. They used tht howe cart to disperse the workers and used hammers to break doors. Inspite of so violent suppression, Mr.Ihn Sik Hong, one of the strikers, shouted slogans while hanging on the frame of the window. The police shut the water through the water hose and he felldown on the cement concrete road.

He is still in the hospital and the police prohibits visitors. Those citizen who observed the accident were getting angrywith the violence so that around 1,000 citizen joined with the workers and the demonstration was firing. However they were brought to the police station finally.

LABOR DAY

On the 10th of March, the Labor Day, there were lots of programmes that showed sincere inspiration of the workers for the just Labor policy. Korea Christian workers' League organized a programme and 1,000 workers participated in the programme. After the programme, there was a demonstration confronting with the police for 2 hours. On the same day, the Workers Welfare Association organized another programme in the Catholic church and about 700 participabed. In In Cheon, the workers League Planned to hold the Rally in the Gae Yang tample but due to the interuption of the police, they moved to the Jeon Dung Tample. Around 300 workers were in the rally and soon they were surrounded by 1,300 policement and the confrontation continued until 3 am of the following day.

URGENT NEWS: Mr.Young Jin Park burnt himself demanding for increasement of wage and stop the unjust expelling

On the 17th of March, Mr.Young Jin Park, who was on strike for increasement of the wage in the Shin Hung precison industry, burnt himself. In Shin Hung, the workers planned to have a strike protesting the unjust expel and for increasement of the wage. However it was not realized by the interuption of the company so that only the 9 leaders gathered in the dinning room and started demonstration shouting the slogan. One hour later, the police entered into the building and 5 of the leaders ran up to the balcony of the 5th floor. 30 policemen followed them and, at this moment, Mr.Park appeared on the 5th floor shouting that he would put fire on himself after counting one to ten if the policemen did not move out from the building. He was already wet by oil. However the policemen did not move at all and finally he put the fire on himself. It was around 2:30pm. Inspite of the emergent case, the police did not take his burning body immediately in order to arrest the rest. He was brought to the hospital only 10 minutes after the moment and he died at 3am on the following day shouting "Down the anti-force for democracy ! Fight and struggle! Let's make the workers be owner of the society ! There should be justice, love and peace in this land !" While he was still alive, the police went to his home and brought his parents to somewhere in order to negociate with his parents. The police did not inform the truth to his parents that he was almost dying so that his parents could not be with him at the moment of his death.

His funeral was prepared by various workers organizations, church organizations and activists on the 20th of March in the Gang Nam Secrete heart Hospital.

******* The Secretary General of KCAO:Korea Christian Action Organization, Mr.Gil Jae Lee was arrested on the 27th of March related to the office circulars on the labor movement. He is still under the interrogation.

Mr. JENKINS. Mrs. Burkhalter?

STATEMENT OF HOLLY J. BURKHALTER, WASHINGTON REPRESENTATIVE, AMERICAS WATCH, HELSINKI WATCH, AND ASIA WATCH

Ms. BURKHALTER. Thanks for having me. The Americas Watch, Helsinki Watch, and Asia Watch have testified dozens of times before the House and Senate Foreign Affairs and Foreign Relations Committees, but this is the first time we have had the honor to be with this committee.

We are here because we strongly support the labor rights legislation already passed, and we strongly support the legislation under consideration.

Our position is not one which is based on the impact on the U.S. labor, though I am personally sympathetic on that point, but based on the repression of workers overseas. Our three committees monitor dozens of countries, and I have picked four countries to talk about in my testimony. I will not go into detail now because you have it before you.

The Helsinki Watch monitors Poland and Turkey among many other countries. The Americas Watch provided testimony on Chile, and the Asia Watch talked about Indonesia. I couldn't resist throwing Poland into my testimony, even though Poland is not a recipient of GSP benefits or OPIC insurance.

There are other ways the United States effects trade with Poland, and I am speaking specifically about Poland's participation in the IMF to be voted on on the 21st of this month.

The same kinds of violations against labor which the Jaruzelski government employs against Polish workers happens in other countries as well, and other countries that receive the benefits we talked about.

Each country has a different sort of labor situation, but in Indonesia the labor repression assumes a form very familiar in the Communist countries, even though they are a pro-Western Government, that is, an official federation is created.

Independent federations are prohibited, and a very hierarchical pyramid structure is employed, and the Government dominates those large organizations. So while Poland is excluded from these benefits, countries which emulate that sort of control that Poland employs are not excluded.

Without going into the details about labor violations in the four countries, I would like to make the point that my particular interest in congressional attention on violations of unfair, repressive labor practices is this:

In many of the countries, violations against labor are part of Government repression generally. For example, in Korea, which Mr. Harvey talked about, labor unions themselves are not alone repressed by the Government. They form part of the whole struggle for democracy, along with students, professors, human rights peoples and many other sectors of society.

And in Chile, the labor union movement leads the democracy struggle, and they are repressed. The Chilean head of the copper miners' union has been in and out of jail dozens of times in the last

couple of years, and not exclusively because he is a trade unionist, but he is also a leader in the struggle for democratic rights in Chile generally.

In Turkey, for example, thousands and thousands of Turkish citizens were jailed since the 1980 coup, and thousands of labor unionists among them, and at this particular time there is a trial ongoing of the DISK Federation, where thousands of trade unionists are defendants.

They and many others in Turkey ended up in jail or under indictment because of struggles for free expression and free association in that country.

The labor rights language which you are considering is important, because it provides the U.S. Government with a handle, a discrete and quantifiable policy handle, if you will, with which to support democratic developments in some of these countries.

Thus, we think if the Reagan administration would take seriously the Pease language on GSP and on OPIC, with respect to Chile, for example, it is one more way of encouraging democratic government there generally.

It is a strong and vivid demonstration of U.S. concern, and it is one that the Chilean economic elite and the Chilean Government are going to have to pay attention to.

We should support efforts for the democracy movement in Korea, for example, and one good way to do it is required by law now, under the labor rights language associated with the GSP and OPIC, and we urge the administration to use this valuable tool to support democracy generally.

I would urge, in closing, that our diplomats employ creative approaches with some members of the East bloc as well as Poland, Romania, where we have at least the prospects of some trade relationships, and where labor rights should be in the forefront of our considerations in those relationships.

Thank you very much.

[The prepared statement of Ms. Burkhalter follows:]

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LABOR RIGHTS VIOLATIONS IN INDONESIA, CHILE, TURKEY, AND POLAND

Testimony by Holly Burkhalter

For the Americas Watch, Helsinki Watch, and Asia Watch

Friday, April 11, 1986

Thank you for holding these hearings, Mr. Chairman. I appreciate the opportunity of testifying on behalf of my three organizations, the Americas Watch, the Helsinki Watch, and the Asia Watch. The Watch Committees monitor human rights in Latin America and the Caribbean, in Asia, and in the 35 countries which signed the 1975 Helsinki Final Act, particularly the countries of the Warsaw Pact and Turkey. We appreciate the good work of the Subcommittee and of Congressman Pease, in particular, in focusing Congressional attention on labor rights violations as an unfair trade practice. The legislation you have enacted, which conditions trade concessions under the Generalized System of Preferences (GSP) and Overseas Private Investment Corporation (OPIC) insurance and loans on labor practices in recipient countries, applies particularly to Chile, Indonesia, and Turkey. My testimony also includes a discussion of Poland, which does not receive GSP benefits or OPIC assistance, because of the importance of U.S. economic

The Americas Watch is a Committee of the Fund for Free Expression and it is affiliated with the Helsinki Watch Committee.
The Lawyers Committee for Human Rights is Counsel for the Americas Watch.

sanctions against Poland based on continuing human rights problems, including violations of free trade union activity.

LABOR RIGHTS VIOLATIONS IN INDONESIA

In 1985, $27.6 million worth of Indonesian products were imported into the United States under the GSP. OPIC provided insurance for investments in Indonesia totalling $13,477,953. Labor rights standards attached to the GSP and to OPIC are particularly applicable to Indonesia, where independent labor union organizing and activity are subordinated to government-dominated labor organizations.

Despite its fierce anti-communist orientation, the government of Indonesia has developed a system of labor relations that in many respects resembles the systems found in Eastern European countries. A government-dominated labor organization is the only trade union federation permitted. Authorities quickly stifle independent efforts at local organization, and real or imagined "trouble makers" are systematically denied employment opportunities.

Members of the government party dominate the leadership of the trade union federation and government appointees fill many of its positions, and under Indonesian law, the government's organization is the only union federation permitted. Independent voices within the federation are also silenced and security and police officials have often been used to stifle criticism. Over the past decade, dozens of reports in the Indonesian press have revealed that officials -- or employers working with the support

of government officials -- have replaced independent-minded factory-level union boards, fired and/or detained independent workers elected to lead union locals, and crushed attempts to establish new locals. Finally, strikes in "vital" industries are explicitly prohibited and strikes in other sectors may not be initiated without permission from the Ministry of Manpower, which almost never grants it.

In November 1985, the Indonesian Ministry of Manpower took several steps to bring labor union activity even more firmly under government control. A new labor confederation, the All Indonesia Union of Workers, replaced the government-controlled confederation by consolidating the 21 craft-based unions into 10 "departments". The new organization will be more centralized and hierarchical, and reportedly, union leaders will be appointed rather than elected except at the factory level.

In addition to these explicit violations of the right to organize and associate independently, the Indonesian Government practices another form of repression against workers: denying persons considered politically suspect the right to work. Following the coup attempt in 1965, nearly 1.5 million Indonesians were arrested and detained, the majority for alleged identification with the Indonesian Communist Party. In fact, many were jailed because they were members of banned unions. More than 99% were never formally charged or tried. By the end of 1979, most of these untried prisoners had been released from jail, but under Indonesian law they are prohibited from occupying numerous professions. The ex-detainees -- comprising nearly one percent of the entire population, cannot become teachers,

university lecturers, journalists, lawyers, or traditional puppeteers, nor may they be employed by the government, the military, or in "sensitive" industries. Furthermore, similar limitations are imposed upon the family members of these ex-detainees.

The Indonesian government has also ordered the firing of workers who had never been detained but who have former political connections deemed unacceptable. Late last year, the government fired nearly 2,000 oil workers due to their alleged association with a now-defunct oil workers union. According to sources in the state oil company, some of the fired workers merely had family members associated with the union, which was banned some 20 years ago. The Minister of Manpower, Retired Admirel R. Sudomo has said that the total number of oil industry employees who will be fired for alleged association with the Indonesian Communist Party may reach 6,000, and that firings could spread to other industries.

LABOR RIGHTS VIOLATIONS IN TURKEY

In 1985, Turkish products totaling $39.4 entered U.S. markets duty free under the GSP, and OPIC ensured $12,337,102 worth of U.S. investments in Turkey.

Prior to the 1980 military coup in Turkey, the Turkish labor movement had developed into an increasingly politicized and powerful force in Turkish society. After the September 1980 military coup, union activities were suspended indefinitely. Turk-Is, the largest confederation of trade unions, founded in

1952, was not outlawed, but was barred from union activity. DISK, a left-wing splinter group from Turk-IS, founded in 1967 and the second largest trade union confederation in Turkey before the coup, and MISK, another union group, were suspended.

After banning all union activity, the government established the Supreme Arbitrarion Council (SAC) to handle wage negotiations and labor-related issues and strikes were banned.

The Turkish constitution bans "political aims" or "political activity" by trade unions, which are prohibited from functioning as pressure groups or participating in political parties, and severely curtails the right to unionize.

Many labor unionists were detained without trial following the 1980 coup, including hundreds of DISK members. Among those arrested were 52 of DISK's top administrators, including its president, Abdullah Basturk. The DISK leaders are charged with "interfering with the work of the Parliament" and "trying to change the form of government." A trial of 85 DISK leaders began in the Martial Law Military Tribunal in 1981, and continues to this day. The prosecutor recently dropped his demands for the death sentence for the DISK defendants and is now seeking sentences of from 6 to 20 years in prison. The DISK leaders' trial has been merged with the trials of members of 30 DISK-affiliated unions. The number of unionists on trial is now 1,477; 3,694 DISK members have been prosecuted. By August 1984, most of the DISK defendants had been released on bail from prison, but the DISK trial continues and the charges against them are still pending. Meanwhile, the activities of DISK and its affiliates are suspended pending the outcome of the trial.

On December 13, 1985, the lawyers for DISK requested that the court allow the unions that are members of DISK to resume their union activities and requested that properties being held in trust be returned to the pertinent union organizations. These requests were denied.

According to the 1985 State Department Country Report on Turkey, strikes against companies established in the newly created free trade zones are forbidden for ten years, during which period both employers and unions must accept binding arbitration.

LABOR RIGHTS VIOLATIONS IN CHILE

In 1985, $44.6 worth of Chilean products entered the United States duty free under the GSP, and OPIC ensured $173,565,932 worth of U.S. investment in Chile. The Americas Watch is particularly concerned about violations of labor rights in Chile, and testified before the U.S. Special Trade Representative last summer.

The 1985 State Department Country Reports on Human Rights in Chile described numerous restrictions on labor union activity under the Chilean Government's 1979 Labor Plan, including the outlawing of certain unions, prosecution of unionists for holding unauthorized demonstrations, detention of union leaders, raids and searches of union premises, dismissal of labor leaders from their jobs, and strict limits on the right to strike. Collective bargaining as we know and understand it, is prohibited under the 1979 Labor Plan, which forbids the participation of federations

and confederations in collective bargaining and excludes issues involving the employer's administration of his business.

In recent years, labor unionists have assumed a leadership role in the struggle for democracy in Chile. As a consequence, they have been the victims of harsh government repression. There were numerous government attacks on labor unionists in 1985 and 1986. In August 1985, a group of 14 people, including labor and community leaders who met to protest the killings of three people, including a trade union leader, were arrested and sent into internal exile. In September, 62 community, labor and political leaders were arrested for participation in a demonstration; 34 of them were sent into internal exile. Later in the month, 24 more opposition figures were arrested, including the leaders of the National Workers Command (CNT), Rodolpho Seguel, Manuel Bustos, Arturo Martinez, and Jose Ruiz de Giorgio, as well as members of the National Teachers Association. The labor union leaders were held in jail for months before charges were dropped. On January 30, 1986, an appeals court accepted a government motion to deprive the elected leadership of the Copperworkers Confederation of their legal standing as union representatives. In early March, 1986, construction workers' leaders Sergio Troncoso and Reynaldo Alvarez were arrested after their unions protested the lack of progress in the case of government abuses committed against the National Teachers Association. In March 1986, Rodolfo Seguel was again arrested following his participation in a demonstration.

In our June 25, 1985 testimony before the Office of United States Trade Representative, the Americas Watch cited a number of

complaints received by the ILO regarding deprivation of labor rights in Chile, including the use of internal banishment to punish union organizers, the assassination of the president of the Santiago branch of the National Teacher's Association, Manuel Guerrero, in March 1985, and the 1982 assassination of Tucapal Jimenez. As a result of repressive government policies illustrated by these cases, membership in Chilean unions has dropped dramatically during Pinochet's presidency; In 1973, 44% of the workforce were represented by unions; ten years later only 16% of the work force, or 600,000 workers were union members. Our testimony concluded that, "Chile does not meet the requirements for eligibility under the GSP, for it fails to afford workers internationally recognized workers rights, specifically with regard to the right of association and the right to organize and bargain collectively. The United States should not continue to abet this situation, even indirectly. Americas Watch therefore strongly opposes the renewal of GSP trade benefits for Chile." I would like to add that the addition of labor rights language to the Overseas Private Investment Corporation provides the U.S. with an excellent opportunity and obligation to end OPIC loans and insurance for investment in Chile, as well.

LABOR RIGHTS VIOLATIONS IN POLAND

While Poland receives neither GSP benefits nor OPIC-ensured investments, the issue of Polish violations of labor rights is an important one for the United States Congress to consider.

Following the imposition of martial law in 1981, the United States imposed a number of sanctions against the Government of Poland, including opposition to its participation in the International Monetary Fund, exclusion from MFN trade status, and a freeze on credits. At the time they were imposed, the Reagan Administration announced that sanctions would remain in effect until martial law had ended, all political prisoners were freed, and dialogue between the government and the Catholic Church and Solidarity resumed. (The Administration later weakened its demands to Polish achievement of "meaningful liberalizing measures".) In December, 1984, following an amnesty for most political prisoners, the release of Solidarity leader Bogdan Lis, and the lifting of martial law, the Administration dropped its opposition to Polish participation in the International Monetary Fund. On April 21, 1986, The Executive Board of the International Monetary Fund will discuss the report of the Committee on Membership regarding Poland's admittance, and once approved, member countries will be polled, and Poland will most likely be admitted.

Unfortunately, the Jaruzelski government's human rights achievements proved to be short-lived. Today, many of the prisoners released in the 1983 amnesty are back in jail -- including Bogdan Lis and many other Solidarity leaders, including Bogdan Borusewicz, Tadeusz Jedynak, Adam Michnik, Wladyslaw Frasyniuk, and Czeslaw Bielecki.

As you know, repression against free trade union activity in Poland is complete. Solidarity -- which continues to be the real representative of Polish workers and is a democratic social and

political movement as well, is illegal and people can be and are arrested for any Solidarity activity. Persons printing and distributing underground Solidarity literature have been particularly targeted in recent months. The government has set up official union federations and there is enormous pressure on workers to join. Many perquisites, such as family vacations, some health benefits and purchase of certain goods are linked to union membership in the government's union.

The government's far-reaching repression of Solidarity has had profound consequences on labor productivity and thus on Poland's economic stability. According to an August, 1985 Solidarity document known in Poland as the Walesa Report, government suppression of labor rights has resulted in a real crisis for Poland. Worker productivity has plummetted because workers are apathetic and have no incentive to improve their performance. In spite of an increase in wages, which represents the government's efforts to buy off certain labor sectors, productivity has not increased.

The economic impact of Polish suppression of labor is something which the International Monetary Fund should examine closely before recommending loans to Poland. As R.T. Davies, the former U.S. Ambassador to Poland noted in his April 9, 1986 article in the Washington Post, Poland's leaders have been talking about economic reforms for 30 years, but nothing has been done. The most urgently needed reform of all is for an end to the suppression of Solidarity. The Congress should encourage the executive branch to monitor Polish violations of independent labor activity within the context of the International Monetary Fund, and the U.S. should link any change in remaining economic sanctions against Poland to genuine human rights improvement, particularly the release of all political leaders and dialogue with Solidarity.

Mr. JENKINS. Thank you very much.

I appreciate the testimony of the entire panel. I know that wage rates differ for many legitimate reasons from country to country. Even though I like the direction of trying to equate labor costs, I recognize the impossibilities of doing that for a legitimate reason, but Mr. Cavanagh, you gave an example of a company which has engaged in country hopping for cheaper labor.

Is this a normal practice by multinational companies?

Mr. CAVANAGH. This is certainly a normal practice for multinational companies that are involved in assembly type operations, so it would include clothing manufacturers, electronic, toys, that sort of thing, and it is not only that they are shopping for cheap wages.

Clearly, they are also shopping for Government guarantees of a controlled labor force, because actually, in two of the countries, the reason they left was more because workers began to exercise these basic rights, not only because of low wages.

Mr. JENKINS. You gave some examples of the percentage of three or four countries, comparing the wage costs between those countries and the United States.

What is the average wage cost here in the United States?

Mr. CAVANAGH. Around $12 an hour.

Mr. JENKINS. What many members of both bodies do not recognize, and generally the public, if you stop to think about it, if it is $12 an hour. I will accept that we are spending roughly $1.60 an hour in this country for Social Security per hour.

That includes the employee part, as well as the employer part. It is very difficult for the public to understand, and extremely difficult for me to understand how we can charge ourselves, and we all favor it. It is for a good purpose, $1.60 an hour, to provide benefits for workers which are well justified, and expect a domestic manufacturer to compete with countries who have an oppressive labor force, who have no benefits of any significance.

I simply am unable to fathom how the average domestic manufacturer can ever hope to compete for long without doing exactly what Mattel has resorted to.

They will end up shopping for cheap labor, and I understand that. But not many people understand really that we pay $1.50 an hour just for Social Security in this Nation.

That is a rather staggering figure when the average wage in Thailand is how much?

Mr. CAVANAGH. It would be around $2 a day.

Mr. JENKINS. For a 10-hour day, 30 cents an hour, so they pay 30 cents an hour total, and we pay $1.60 for Social Security alone before we get to any wages. That is rather staggering.

Thank you for your testimony. I know Mr. Pease has some questions, because he has taken the lead in this field. I recognize him.

Mr. PEASE. Thank you very much, Mr. Chairman.

I do not have any questions, as a matter of fact. I would like to thank the panel members for being so kind to the legislative ideas that I have tried to pursue.

I thought I detected some rhetoric in some of these statements. In any event, Mr. Chairman, I do think this is a very important area for the subcommittee to consider. Your questions are good ones, and this legislation does not provide a complete answer to the

dilemma that you raise, but I think it is an answer, and this problem is going to be with us for many, many years to come in the future.

When you have 3½ billion people in the world who would be delighted to work for $3 a day, it is not going to be any time soon that wages are leveled out among the Nations, so it seems to me since this is a long-term problem, we need to get started now, to give workers in those Third World nations an opportunity to better themselves, and ultimately, that will not solve the problem that you raise, but it will tend to narrow the gap somewhat between wages in the United States, and wages overseas.

As you know, when a multinational company makes the decision about whether to locate a plant here in the United States or in some Third World country, it does a detailed cost analysis and a lot of factoring into that, the need for research, flexibility costs, flexibility, adaptability, all that sort of thing, and they come to a bottom line.

Well, wage costs are only one part of that calculation. And it seems to me even in an increase in wages from Thailand to $7 a day might tip that equation overall in favor of continued production in the United States rather than relocating overseas.

The only other point I would like to make is that we are dealing with trade. For the last 4 years, and for—but especially for the last 40 years, trade has been, free trade has been promoted as a development tool.

Trade is supposed to make everybody well off. Certainly, your constitutents in Georgia might wonder about that. Certainly, concessionary terms on trade such as the generalized system of preferences have very much been promoted as a development tool, and if that is going to be the case, the benefits of trade ought to go to some besides a multinational corporation. They ought to go to the people who live in the country who are ordinary citizens, and need to have better wages and better working conditions to improve their own lives.

It seems to me that this legislation that I have introduced speaks to that development factor. It also speaks to the overall improvements of human rights in each of these countries, as was pointed out.

I would like to say that I have been won over by the eloquent testimony of our witnesses, and I am going to support my legislation 100 percent, and I would like to thank you for your support this morning in another fora with this legislation.

Mr. JENKINS. This concludes the hearing for today. The hearings will resume on Tuesday, April 15 at 9:30 here in the same room.

[Whereupon, at 11:25 a.m., the subcommittee recessed, to reconvene at 9:30 a.m., Tuesday, April 15, 1986.]

TRADE REFORM LEGISLATION

TUESDAY, APRIL 15, 1986

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The committee met at 9:40 a.m., in room 1100, Longworth Office Building, Hon. Sam M. Gibbons presiding.

Chairman GIBBONS. Good morning, ladies and gentlemen. This is the Subcommittee on Trade of the Committee on Ways and Means. And I want to announce before we go ahead with the witnesses this morning that the markup of the bill will begin on Monday afternoon, the 21st, at 1 o'clock right here in this room. We are going to start at that time.

Our first witness this morning is a friend of long standing, former Chief of Staff of the White House, head of the Motion Picture Association of the United States, one of America's largest export industries, one who has already taught us a lot about problems in intellectual property rights and barriers that our products face overseas, Mr. Valenti.

Jack Valenti, will you come forward and be our first witness today.

STATEMENT OF JACK VALENTI, PRESIDENT, MOTION PICTURE ASSOCIATION OF AMERICA, INC.

Mr. VALENTI. Thank you very much, Mr. Chairman.

You know, congressional issues ricochet around Capitol Hill. Some of them are noisy and some of them leave an impression no more durable than dry leaves in a high wind. I think there is one issue that can have some legitimate claim to urgency. That is fair trade, or rather, Mr. Chairman, the lack of it.

That is why, if you will pardon me reaching to a great Hollywood script writer named William Shakespeare, I would let him set the theme for what I am about to say to you very briefly. In Richard II, Shakespeare has the King cry out in anguish: "For God's sake, let us sit upon the ground and tell sad stories of the death of kings, let us talk of graves and worms and epitaphs."

Mr. Chairman, unless this Congress with some unshakeable resolve shoves some steel in the spine of our trade laws and makes them stick, we will soon be telling sad stories of the death of our export trades, and we will have the gloomy task of composing our own epitaphs.

I can warn you that the U.S. film and television industry is a great jewel in the crown of trade assets in this country. We return

to this country some $1.2 billion a year in surplus balance of trade. This is right in the middle, of our $150 billion hemorrhaging trade deficit. The U.S. film and television industry is a national asset. It ought to be preserved and protected.

All over the globe, it is fair to say, American film and television programs are the U.S.'s most wanted export. Without question we are the supreme visual dominating force in the world.

Even as foreign businessmen roam our business markets with total freedom, robust freedom without restriction, American films and television programs and home video material find no such hospitality in too many nations. We are crippled and confined.

We are finding unscalable trade walls. Sometimes we are branded intruders and stopped at the border without having easy access to those marketplaces. I can report to you that through my personal experience in negotiating with some 50 countries around the world that the most ingenious Machiavellian bureaucrats to be found anywhere are those who inhabit foreign chanceries. Each day they devise ways and means to bar and baffle the entry of American films and television programs into their country, foiling our movements in the country. In many cases—I will cite a couple to you—they effectively exile us from these marketplaces.

Let me just give you two examples of two great friends of this country, allies of long-standing, countries about whom we care a great deal and have more than affectionate regard, Brazil and Canada.

In Brazil, a governmentally ordered regulatory agency goes about its task every day of trying to damage and to restrict the entry and the movement of American films and television and home video material into that great country. Indeed, because of restrictions of the most obscene kind, we are effectively barred from marketing home video material in Brazil.

As a result of that, because of the lack of legitimate product in Brazil, illegitimate, pirated material is innundating that country, stripping us of those markets. Because we cannot effectively get into their with our home video material.

I have spoken to the Brazilian Ambassador, who has been most forthcoming, and I think understanding of this problem. He is trying to be an intermediary in negotiations that are now going on. But, as of this moment that restriction is in place.

To the north of us is the longest unguarded border in the world, Canada and the United States. We are faced with problems with the Province of Quebec that could realistically stop us from doing business in that Province.

More importantly, there is a shadow on the horizon no bigger than a man's figure right now, but I think it may grow larger. There is a Canadian report from a governmentally sponsored task force whose recommendations urge that Canada should nationalize its film industry to the extent that all American film and television and products that go into Canada should be stopped at the border and turned over to Canadian distributors. This would effectively make us exiles in that marketplace.

Moreover, the Canadian cable systems today are bringing in U.S. television signals. They fetch them from the sky, bring them into those head-ins, and sell those programs to Canadian subscribers.

They pay nothing for the programs, nothing to the creative people who labored over those programs and nothing to the people who invested and own the copyright in those programs.

Why? Because they have a slightly-formed, loose fibered Copyright Act that in no way and in no point touches the heart of the matter, which is the protection of intellectual property.

I could go on with other countries around the world. The point is that these countries, good friends of ours, at this moment are constructing hedge roads that make it difficult for the American film and television programs to compete fairly in those countries. I emphasize "compete fairly." We do not want any particular favors, we do not ask any quotas, we do not ask anything except the right to compete fairly and competitively in those marketplaces.

I am not going to come before you and cite the problem without offering to you with due respect some suggestions for how this might be handled. I hope you would find this congenial to your own thoughts so you might insert this in the trade bill.

First, we have a section 301 of the Trade Act of 1974 which allows a complainant to go before the Special Trade Representative, file an unfair trade complaint and then try to demostrate by evidence before the STR so that some kind of resolution of that trade complaint can be effected.

What is needed, Mr. Chairman, is a fast-track proceeding. We need some way to compress time. There is a long time lag, at least a year, 45 days before a trade complaint is accepted, a long time lag. We need a fast-track proceeding.

Second, we need to include within the list of specific trade sanctions the elimination or the reduction of the generalized system of preferences. It is ironic and even sardonic that a number of countries with whom we have had terrorizing trade negotiations are the ones who are benefitting, $1, $2, $3, $4, $5 billion a year in GSP's, through duty free products.

We need to be able to have specific trade sanctions. If a country refuses to open its borders, the President should go in, and eliminate or reduce by a specific amount those GSP benefits. That is the kind of retaliatory action that we all understand.

Third, we ought to provide for mandatory surgically precise trade retaliation if the nation involved does not have GSP's. A number of countries, with whom we have problems, do not have GSP benefits. That is absolutely important.

I use the word mandatory. I know that is the kind of word that has all sorts of rattling premonitions with it, but I really do believe that is important for a mandatory strike if those nations with whom negotiations are going on fail to yield to reasonable compromises.

Fourth, we should require monitoring of all settlement agreements. We should provide for automatic trade sanctions when a foreign country reneges on its pledges. Also, we need a congressional mandate to investigate market barriers to determine which countries are putting up these sand bag barriers against American products entering their marketplace.

These findings could instruct the Congress as to the extent of these ailments around the world. They would allow you to move

with more precision, if that is what you think you need. I believe it is.

I want to be blunt. Unless Congress buckles on its trade resolve and clearly determines to make the foreign trade field a level playing field, we are going to continue to dance this great elusive minuet that has been going on for many years.

Foreign countries hire expensive lobbyists. I am not opposed to that. Many of my friends earn their living that way. But, these people, who know the nooks and crannies of Washington, counsel their clients:

> Do not worry, folks, hunker down, do nothing, and let this clanging rhetoric go over your head because we promise you nothing will happen. Nothing ever happens. A lot of hearings get held a lot of speeches get made, a lot of declarations ring around the council, but nothing ever happens.

Even as we are talking today foreign countries are building these barriers against American products. A trade bill ought to be based on the golden rule of trade. That is we ought to expect from foreign businessmen a kind of hospitality entry into their marketplaces without restriction that foreign businessmen find so alluringly seductive in our marketplace.

I do not find that an unfair suggestion, Mr. Chairman. We do not want you to give us any special privileges. We ask only that this committee makes sure that as our marketplace is free and unimpeded and hospitable to foreign businessmen, but also that it is possible for us to find that kind of hospitality in other countries. That is all.

[The prepared statement follows:]

Testimony of Jack Valenti
President
Motion Picture Association of America, Inc.
on Trade Reform Legislation
April 10, 1986

Executive Summary

THE PROBLEM

Foreign nations build unscalable trade walls to shrink American film and TV entry into their markets.

So-called non-tariff trade barriers assume many guises: discriminatory taxes, quotas of varying and ingenious kind, dubbing licenses, exhibitor cartels, subsidies for local film producers, mandatory deductions from the boxoffice, and under the canopy of 'cultural sovreignity' attempts to exile all U.S. companies from the market. In addition to these non-tariff barriers, American films and TV programs frequently face inadequate and ineffective copyright protection which robs U.S. producers of their intellectual property rights.

Examples: In Brazil, an official regulatory body limits the exhibition of U.S. films through screen quotas, and effectively bars U.S. motion picture firms from entering the home video market.

In Canada, slackly-formed copyright laws allow Canadian cable companies to pick up U.S. TV stations' programming without paying one penny to those U.S. citizens who own those programs. Moreover, a governmentally sanctioned 'task force' has recommended draconian measures which would, in effect, put all U.S. film distribution firms out of business in Canada.

OUR PROPOSALS FOR LEGISLATIVE CHANGE

1. Provide for fast-track proceedings in Section 301 (of the Trade Act of 1974) actions before the Office of the Special Trade Representative.

2. Include within the list of specific trade sanctions the reduction or elimination of GSP benefits.

3. Provide for mandatory, surgically precise trade retaliation if the nation involved does not benefit from GSP.

4. Require monitoring of all settlement agreements, and provide automatic trade sanctions when a foreign country reneges on its pledges.

PROPOSAL FOR PROTECTION OF INTELLECTUAL PROPERTY

1. A congressional mandate to investigate market barriers to determine which countries are putting up 'trade barrier sandbags' at their borders. These findings will instruct the Congress as to the extent of the trade damage and pinpoint those countries guilty of unfair trade practices.

2. If negotiations with those countries fail, the law should impose mandatory trade sanctions against those nations taht refuse to open their borders and/or construct suitable defenses for the protection against unauthorized use of U.S. intellectual property.

Mr. Chairman, Members of the Committee, my name is Jack Valenti. I am president of the Motion Picture Association of America, Inc., whose members are producers and distributors of video entertainment material for theatrical, television and home video exhibition. The MPAA member companies distribute feature films, television programs and home video materials in the United States and some 80 foreign countries. The foreign export activities of the U.S. motion picture industry as a whole contributes over $2 billion annually to this country's foreign exchange earnings. Attached to my statement is a list of MPAA Members.

The U.S. film and television industry yearns to compete fairly and equitably in every market on every continent in the world.

We ask for no special treatment from our government but we do not want unfair treatment from other countries in their markets.

Because most people in the world want to see and enjoy American films and television programs more than any other country's similar creative material, we have become the target of unfair trade barriers inflicted on us by too many foreign countries.

These practices are in two categories:

One, market access barriers, known as 'non-tariff' trade barriers, and two, laggard protection of U.S. intellectual property.

These 'trade cliffs' which are difficult to scale are varying, ingenious and deadly. They include, but are by no means limited to:

-- Governmental bans on doing business in Indonesia;

-- Severe and unreasonable restrictions on remittances in India;

-- Import quotas in Spain, Taiwan and India; and

-- Governmentally controlled theater admission prices in Venezuela, Colombia and Mexico.

Under the canopy of 'cultural sovreignity' some nations choke off our entry into their markets, declaring their culture must not be diluted or distorted. But what they really mean is they want their own national distribution enterprises to market U.S. films and TV material, exiling U.S. firms from their marketplace.

On the intellectual property front, too many countries have loose-fibered copyright laws or they have no such laws of any kind, and both infirmities allow rampant use of U.S. property without our permission and without any compensation.

Pirates, of the most professionally effective criminal elements, or legitimate businessmen operating within the boundaries of their ineffective laws, or both, conspire to rob U.S. copyright owners of their just compensation, and make it impossible for U.S. legally conferred material to find a market.

Let me give you two examples of such barriers in both a developing and an industrialized country.

In Brazil, the official regulatory body of the film industry limits the exhibition of U.S. films through screen quotas, imposes burdensome local printing requirements, and effectively excludes U.S. companies from the home video market. The exclusion of legitimate U.S. video material has in turn spawned widespread piracy of U.S. movies on videocassettes. In addition, the government levies arbitrary taxes and recently threatened to nationalize U.S. film interests.

In Canada, the government has imposed severe restrictions and requirements on Canadian subsidiaries of American film companies, and has failed to provide adequate protection of intellectual property rights. For instance, Canadian copyright

law permits Canadian cable television companies to retransmit U.S. television programming without compensation. In other words, Canadian firms pirate the programming of American companies without paying for it. In addition, the Quebec Parliament has enacted legislation which, among other things, requires foreign distributors to invest up to 10% of revenues in local production and will reserve minimum percentages on gross box office revenues for local exhibitors and distributors. These requirements are baldly protectionist and infringe the rights of American motion picture companies to do business in Canada.

These impediments to fair and open trade between countries which share a common border are in danger of being exacerbated further. A recent report on film and video policy, completed under the auspices of the Canadian Department of Communications, recommends the nationalization of all motion picture distribution to theaters, television stations, and home video stores. The report doesn't endorse restrictions on foreign films. Instead, it advocates the creation of a system which will reserve for Canadians the financial return from the distribution of our films. We have a right to control and participate financially in the distribution of our products.

These problems have been the topic of extensive diplomatic consultations. Unfortunately, despite the dedicated efforts of the U.S. Trade Representative and the Departments of State and Commerce, these diplomatic efforts frequently produce meager results. That is why we need Congressional action. Our trade negotiators, as capable as they are, cannot deliver results if they are unarmed. You must give them the ammunition they need to open foreign markets and to enforce international norms of intellectual property protection. Unless this is done, our motion picture and television production industries will be throttled at the starting gate.

Our trade laws must be bolstered and reinforced if we are to succeed in forging a more effective trade policy. Legislation has already been introduced to curb the import of pirate material by strengthening the provisions of Section 337 of the Trade Act. In addition, Section 301 of the Trade Act of 1974 could and should be made a much more effective tool in combatting foreign unfair trade practices.

To begin with, section 301 should be amended to provide for fast-track proceedings where a domestic company can show that it is experiencing a trade emergency. Under present law, it can take a year or more for a Section 301 case to run its course. That is just too long -- American industries need action today, not tomorrow or the day after.

Such fast-track proceedings should also provide for mandatory retaliation where the foreign government does not settle the case on terms providing for the elimination of unfair trade practices. First, Section 301 must provide a strong, credible and certain threat of trade sanctions if our trade negotiators are to have the leverage they need to protect our international trade interests.

Second, section 301 should be strengthened by amendments to explicitly provide for reduction or elimination of GSP benefits as a potential trade sanction. Of course, the President may use his existing authority to reduce or eliminate GSP benefits for any beneficiary developing country that refuses to settle a proceeding on satisfactory terms. However, it would focus the minds of some of our trading partners if Section 301 included a list of specific trade sanctions including denial of GSP benefits.

Third, Section 301 should be amended to require regular monitoring of any settlement agreement, and to provide for the swift imposition of trade sanctions where a foreign country reneges on its obligations under such a settlement agreement. Imposition of trade sanctions where a foreign country has reneged on its obligations should not require a new Section 301 proceeding. Rather, the imposition of trade sanctions should be automatic upon a finding by the U.S. Trade Representative that a foreign country is in violation of its settlement agreement.

The key agency in administering Section 301 is the Office of the U.S. Trade Representative. If we are to expand and reinforce Section 301 -- if we want it to be more effective across the board in protecting our international economic interests -- we must make sure that this office is properly funded. Let us not be penny wise and pound foolish. Even in these lean times, the Congress should provide funding for USTR at a level that will allow it to effectively carry out its mandate.

This Committee should also consider legislation that will cut through the smoke screen of "cultural sovereignty," which is being used as a cover for protectionism in numerous foreign countries. As we try bilateral negotiations to reduce trade barriers, and as we prepare for a new round of negotiations in the GATT, many foreign governments insist that trade issues affecting the "cultural industries" cannot even be on the negotiating table.

Certain governments won't even talk to us about trade barriers which affect many of our most competitive industries -- those which rely on intellectual property protection. Why should they? We don't have enough credible leverage to put these issues on the negotiating table. This circumstance requires a strong and effective response from the Congress.

In the Trade and Tariff Act of 1984, the Congress recognized the tremendous importance of protecting the intellectual property rights of American companies abroad. Two years ago, you provided new mechanisms through which the U.S. government can act to protect our intellectual property rights which are so vital to our economic interests in the modern world. Protecting these intellectual property rights, however, will not be sufficient if the American companies that rely on intellectual property protection are kept out of foreign markets through a variety of trade and investment barriers. That is why we need market access legislation for American intellectual property industries.

I believe that an independent statutory provision establishing a mechanism to open up trade in the intellectual property sectors would be an effective response to this problem. Without a mechanism of this sort, we will be sending our trade negotiators out into the world with their hands tied behind their backs. The cultural sovereignty defense should not be allowed to have such a stifling effect.

I look forward to working with you, the members of the Trade Subcommittee, in the weeks and months ahead to assist in fashioning trade legislation. We need legislation that will provide new tools to combat unfair trade practices -- we must properly arm our trade negotiators -- we must give new momentum and direction to America's trade policy -- and we must send a clear and unambiguous message to our trading partners: that our concerns must be taken care of at the negotiating table. The Golden Rule must prevail. If our trading partners do not open their markets to U.S. intellectual property, as U.S. markets are open to them, they must know that a price will be exacted. Without clear, specific and effective sanctions against unfair trade practices, U.S. trade policy will not have the statutory support it must have in order to succeed.

Attachment A

The ten members of the Motion Picture Association of America, Inc. are:

Columbia Pictures Industries, Inc.
DeLaurentiis Entertainment Group, Inc.
Walt Disney production/Buena Vista Distribution Co., Inc.
MGM/UA Entertainment Co.
Orion Pictures Corporation
Paramount Pictures Corporation
Twentieth Century Fox Film Corporation
United Artists Corporation
Universal City Studios, Inc.
Warner Bros. Inc.

Chairman GIBBONS. You make a powerful case and some good suggestions there, Mr. Valenti. I am concerned about our friends in Canada. Is this mainly their federal government, or provincial governments that are giving us so much trouble?

Mr. VALENTI. The only Province which has so far introduced legislation which has a deadly sting to it is the Province of Quebec. We are at this moment in consultation with that government. We are trying to, as my old boss used to say, "come let us reason together," and to find out whether or not there is some way we can extract these thorns which seem to pain them and at the same time maintain market freedom.

Chairman GIBBONS. What does Quebec do or threaten to do in this?

Mr. VALENTI. They are in a sense in a microcosm doing what the Federal Government through its task force is now threatening. I want to say that the Federal Government is now following on similar restrictions which are advisory in a recommendation form.

That is the following. They want American film distributors and American television distributors and American home video distributors to turn over that product to Canadian distributors in order to market them within the confines of Canada.

Chairman GIBBONS. They normally have complained about being swallowed up by U.S. culture. This does not sound like a cultural barrier, this sounds like a pure economic barrier.

Mr. VALENTI. I do not want my logic to be misinterpreted in any way. I did talk straight with one of the Ministers by saying, on the one hand, you tell us that you want to improve the Canadian distribution apparatus by giving more business to Canada and you want a larger market share for Canadian pictures in Canada, but what you must understand is, sir, that there is no way Americans can force Canadians to see a movie they do not want to see. We cannot put up signs saying please do not buy a ticket to this theater, see a Canadian picture. We do not force Canadians to see our pictures. They like what we create.

Chairman GIBBONS. They like them.

Mr. VALENTI. On the cultural side, we say you are commuting our culture. You merely want to redirect our product to Canadian distributors. I do not know why this is being done. I am saying that this is intolerable and unacceptable.

Nowhere in the world, I might add, are we forced to do business with local and native distributors except in two or three countries where we are now in negotiations. And one of those countries we have already negotiated that restriction out. It is now being abolished.

So almost nowhere, at least in the free world with the exception of Eastern European countries or totalitarian countries, are we faced with this kind of a challenge to the basic tenet of the free marketplace.

Chairman GIBBONS. What kind of relationship do we have with Japan?

Mr. VALENTI. Well, the U.S. film and television industry may be one of the few, besides the agriculture industry, that has a trade surplus with Japan. At this moment our relationship with Japan in

the entry of our products into Japan is open and free and so far unrestricted.

We are not plagued with problems that other American industries seem to have, for which I have great sympathy.

Chairman GIBBONS. Let me ask you about Mexico. Because I will be meeting with the Mexicans soon. Do we have any problems with the Mexicans?

Mr. VALENTI. Our principal problems in Mexico is that government admission prices are fixed by law. They are extremely low. I understand the political problems. I am a political animal by nature. When I am discussing this with foreign diplomats and foreign ministers, I understand their problem.

One of the things I suggested was we could bring our pictures into Mexico and the same picture could play at maybe 20 theaters, 10 of them having absolutely the barest, lowest prices of a few pesos, a few pennies, few cents, another set of theaters can have a higher price for people that want to go to that theater, and the third theaters could have an even higher price for people that want to populate that theater. One way we can deal with the admission price problem is to have an escalating admission price.

Our biggest problems in Mexico now, unhappily, are issues that go beyond the repair that anybody can offer. That is the economic situation in Mexico, for which I have great compassion.

Chairman GIBBONS. Have we solved the problem in Taiwan and in Korea?

Mr. VALENTI. I have to say that the negotiations in Taiwan have gone swimmingly. We have negotiated with them for the past 6 months. I believe it is fair to say that most of the ailments about which we have complained are going to find cures.

We are in the middle of negotiations with Korea. They are going well. The Koreans have been very forthcoming, and the talks are going on. My judgment is that at some point in the future we will find some amicable concord with Korea.

Chairman GIBBONS. You mention in the first part of your statement a fast-track provision for section 301. Now, what is the difference from your business and other businesses about fast-track and regular track?

Mr. VALENTI. Well, I suggested fast-track for all businesses, Mr. Chairman. I am not suggesting for one moment that we single us out as the sole recipient. I am saying on the whole broad tapestry of trade, that the only redress, the only forum that we can go to now is the Special Trade Representative Office. There should be a provision for emergency cases where instead of taking a year to resolve them, you could do it within 2 months, 60 days.

Oftentimes the evidence is so conclusive and overwhelming you do not need long periods of deliberation to determine that the restrictions are there. They are visible, they are marked, they are demonstrable, and confirmable. Therefore, let us do something about them. I am suggesting for all industries there ought to be this fast-track proceeding.

Chairman GIBBONS. I am glad Mr. Pease is here because I want to reiterate that he has had so much to do with GSP, he and Mr. Frenzel both. You mentioned a modification of GSP. Would you go back through that.

Mr. VALENTI. What I was saying, Mr. Pease, is that we ought to have some way for a retaliation that would specify—I would call it a reduction or elimination of GSP's—a way of telling a country that since you will not yield to reasonable negotiation, since you insist on these hedge rows in your country, we are now going to reduce your GSP by 25 percent.

For a country like Korea with $1.5 billion in GSP, as they say in Texas, if you hit it across the head with a 2 by 4 you do get its attention. And I think that kind of retaliation would be helpful, and you could turn the ratchet up. If 25 percent did not do it, then you go to 40 to 50 percent until finally if there is no demonstrable reaction, you go to 100 percent reduction or elimination of GSP.

That is simply using the GSP as a piece of weaponry in our arsenal trying to find some reasonable way to have countries respond to our entities. That is all I am saying.

Mr. PEASE. Will the chairman yield?

Chairman GIBBONS. Certainly.

Mr. PEASE. I think you made an excellent point. The question is whether this is a matter of the law or the administration of the law? As you know, in the 1981 GSP Renewal Act, we did make respect for intellectual property rights a basis for denying GSP privileges in Third World countries.

Do you think that that language in the 1984 act is sufficient, or the problem is with the administration of that act? Do you think we need to strengthen the language?

Mr. VALENTI. Here I tread on delicate ground. First, I want a law. I have been around this town a long time. I think Ambassador Yeutter and his staff, professionals all, are committed with a resolve and zeal that I have not seen for a long time in doing something about these trade inequities. They have been absolutely fantastic and splendid in helping us.

We have been successful in our negotiations because we know in back of us looms the giant shadow of STR if we need them. But there are diverse factions in our government. The trade people want to do one thing and the State Department wants to do another. Many times you do not want to, quote, offend an ally or country for reasons which range from national security to fuzzily drawn and dimly lit reasons. So nothing gets done.

I have said before you came in, Mr. Congressman, that one of the suggestions was to have concerted in the law a sum level and a low level of mandatory response. If a certain given defined process failed, then there would be a mandatory response at this level, with Presidential discretion to turn the ratchet higher if that were required.

I think that one reason why we have not had retaliatory strikes is because there have been conflicting voices within the administration. Having worked in the White House, I understand that. Sometimes the President feels constrained to listen to these voices and decide that maybe we will go the negotiation route some more and not have to really inflict some punishment.

Mr. PEASE. Will the chairman continue to yield?

Chairman GIBBONS. Well, I ought to be yielding to Mr. Schulze. But go ahead.

Mr. PEASE. If you will yield for one more question, then I will let you, Mr. Chairman, continue your own line of questioning.

Mr. Valenti, I do not mean to lead you to criticism of the administration. Actually you know there is a general review going on this year of all GSP products and country designations. And this is the appropriate time to make cutbacks because the fate you are to avoid by any one property rights would be the end of the year before this review is finished. And I too, like you, am impressed with the dedication and zeal of Mr. Yeutter.

Your suggestion of insulating some of these decisions from diplomacy and military consideration, and others, as addressed, is the draft that we are talking about, which would transfer the authority from the President to the USTR to make decisions on what forum action ought to be taken by this country.

Obviously the USTR reports to the President and is unlikely to do something diametrically opposed to what the President wants. On the other hand, if the USTR is making the decision rather than the President, the USTR technically does not have to worry about diplomacy, does not have to worry about the military implications. I think it would be marginally easier for the USTR to take an action on trade which might offend an ally like South Korea than it might be for the President.

Would you agree that making that shift from the President to the USTR would be a desirable move?

Mr. VALENTI. Well, I do not want to spend your time by not being totally honest with you. My judgment is I think that would be largely illusionary. I have no problem with it. I think it might be—I like your word—a "marginal" advance.

But in the real world, as we know, an issue that involved allies, for example, you would have the intrusion of other factors that somehow the President's desire would find its way by some magical ways over to the USTR's office maybe by carrier pigeon or something like that, and it would be known.

I do think if the authority were in the STR, there would be a heavy responsibility for him. You might have this marginal advancement. Right now I think any advance is worthwhile.

I am saying to you right now we are in a fix. Unless something is turned around to make sure that the old phrase "no pain, no gain" must be an instruction given to foreign countries that if they persist in hedge rowing their borders, they are going to have some injury that they are not going to like as a result of this unequal and inequitable treatment.

I think that the STR taking over this as the instrument of the President and the country would be very good. Because this man and that group devote themselves full-time to the enterprise of trying to make a level playing field out of trade markets.

Mr. PEASE. Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

And thank you, Jack. I agree with you, I think we have to respond. And we have to find a mechanism where we can respond. I especially like your term of the Golden Rule. I have introduced a bill which is called the Golden Rule bill. It calls for bilateral trade treaties with other nations. If countries have not negotiated a bilat-

eral treaty with us within 5 years, we give an automatic 25 percent surcharge, which is the hammer, the 2 by 4.

We have too long been too open and easy. We have done this in my opinion in a spirit of altruism to help less developed nations around the world, and we have been successful. Our economy has been the engine which has driven most of the free world. But the time has come for us to be more selective. And the combined economies of the rest of the world are reaching the point of maturity that we no longer have to be dealing with them on a basis of altruism. I agree with your testimony. I would support such a move. And I appreciate your being here.

Mr. VALENTI. Thank you, Mr. Schulze.

Chairman GIBBONS. Mr. Pease.

Mr. PEASE. No further questions.

Chairman GIBBONS. I want to ask you, Mr. Valenti, because of all the people I know you have had more experience with the President. Some of the provisions of this bill seek to take power away from the President and invest it in the hands of the USTR.

You have dealt with a powerful President. One of the ways I have defended this, I said, well, you know, the President has got a lot of decisions he has to make.

If he can turn to his friends around the world who are Prime Ministers and other places and say, you know, these things are controlled by law, the Prime Minister can deal with you on that subject, it is a commercial matter, it should not be involved in our security and strategic discussion, I think that that would in some way liberate the President from the possibility of undue influence. I would not call it blackmail, that is too harsh a term, but something like that.

Based upon your experience, is that a rational approach to the problem?

Mr. VALENTI. Well, based on my experience, I think a strong President, one who is in total command and one who stayed that way would, find any barriers to that full command not suitable to his intentions. I think that also a strong President could use that as a way to say to the Prime Minister just exactly your words.

But by the same token the President does appoint heads of agencies, independent or otherwise. Strong Presidents always make sure that the convictions they hold are shared by the people with whom they entrust this responsibility.

Chairman GIBBONS. I get the point.

Mr. VALENTI. I would say if I were President, I would sure as the devil want in charge of these agencies those who held my philosophical views of things. There are ways to make sure views are known.

I know this does not set well with people in independent agencies. But my experience in the White House tells me when the President wanted a view made known to an independent agency, it was made known. He cannot fire the man who took a view different from his, but generally speaking on issues the President holds dear, he considers to be going right into the heart of his convictions, I believe he could make known his views to the STR.

Chairman GIBBONS. Let me say this. The President can fire the STR or just turn him off, you know. Nobody can tell the President

who to listen to. People have tried for years. But strengthening the hand of the USTR seems to me to take more of the kinds of problems that you run into around the White House off of the back of the President, get them decided at a different level rather than having them decided at the White House.

And I would think that the President and those interested in management could have such a working relationship with his USTR that while he was not forced to make the decisions himself, if any of them ran contrary to his opinions, he could get it straightened out. That is the way I look at it.

Mr. VALENTI. Mr. Chairman, I happen to think that in the foreseeable future, trade as an instrument of foreign policy, as an instrument of our fiscal policy, as an instrument of our economic policy, is so important that the STR ought to even be at the same level as a Cabinet officer.

Chairman GIBBONS. We tried to put him above that level. And that is one of the problems we have had. And I would like to kind of pick your mind there. You see, trade in the past has been handled by—and it is presently handled—some by Congress, some by State, some by Labor, a lot of it by Agriculture, a lot by Trade. And we thought in order to prevent the President having to listen to all those different sections, that we would have something called the USTR. The USTR would be the person who was the voice that would take the final decision to the President rather than the President being forced to listen to all those different Cabinet-level officers.

Now, obviously that has not worked as well as some people thought way back in 1962 it ought to work. We tried to strengthen it in 1974. But is that a viable way of looking at the problem from your experience?

Mr. VALENTI. Well, my counsel would be that there ought to be one forum for trade. I think the office of the Special Trade Representative is that rostrum. I am not one who believes we ought to set about diminishing the President's power. I do not think it is reasonable and I do not think it is realistic.

I do not think that the Congress can govern the day-to-day operations in trade. There are 535 Members of your body and obviously you cannot do it. That must be turned over to an executive department. One man gathering up all these loose and raveled threads that now are running all over the country, bring it within this one forum.

Then the only mandatory thing that I would suggest, as I said, is this low-level mandatory which would not be catastrophic from the President's viewpoint. It would allow one shot to be fired across the bow of the country. After that, the President's discretion would take hold and he could then apply whatever degrees of pressure that he and the Trade Representative thought was reasonable in that particular moment.

So, I think there ought to be one trade agency, one trade department, one trade platform. That is the Special Trade Representative. The Congress ought to clothe him with all of the powers possible defining how they think this ought to operate. Then turn it over to the Trade Representative operating under the Executive Office of the President to do what is required to be done.

Chairman GIBBONS. We have got him in the Executive Office of the President—maybe that is not the right place for him. But we have got in the Executive Office 150 employees in the office of the U.S. Trade Representative. Most are policymakers, they do some administration but mainly are policymakers.

One of the problems we have had is introducing that person to the President. You know, I might have the U.S. Trade Representatives in my tenure around here because they have to be introduced by the President. If they wandered through the White House by accident, I doubt the President would recognize them. I do not remember the name of any of the U.S. Trade Representatives when you were in the White House. I do remember Bob Strauss because he had the personality if you are not going to take me seriously there is no sense me being in this job. And that got the President's attention when he said that, Mr. Carter.

But one of the problems is we have put somebody in the Executive Office of the President, gave him a staff, but we are having a hard time getting the President to listen to him.

If you do not have any more suggestions right now as to how we solve that, some time in the middle of the night if it comes to you, give me a call.

Mr. VALENTI. Mr. Chairman, if I may respond to that too, we are talking about the human condition. Some leaders are strong and effective and some are slack and laggard. That is the way leadership goes. I am saying to you a lot of how the STR operates depends on the personality, the energy, the resolve, and I think sometimes the charisma of the Trade Representative.

Now, I have to say that my observations of Ambassador Yeutter have been all very complimentary. I think he is an able, energetic fellow. I think the President does know who he is. He made his imprint. He is good. He is doing an excellent job.

I am saying I think what we need in this trade bill is more authority for the STR to act, a timeframe for the STR to act, some precise and defined what I call surgical trade retaliation processes that he can go through, and some minimum mandatory level of movement which would give other countries the right to know that no matter who they are, there is a price to pay.

Now, I do not know how you can ever take this out from under the President's final authority, but I do believe we have a structure now, I am saying that there needs to be more congressional resolve in defining the congressional determination that we are going to have level playing fields, and we are going to garment you, Mr. STR, with all of the armor that you need, and here is your arrow and here is your quiver, and bow, and then set him off on this great adventure.

Chairman GIBBONS. I am going to ask the staff to see what they can do to improve the situation from a technical point of view and what additional powers, duties, and responsibilities we can give to this person so that he really has the ear of the President, that he really speaks for the U.S. Government rather than being primarily, as he is now, a negotiator with various Cabinet-level jobs.

Anything that you, based upon your great experience, can suggest will be greatly appreciated.

Mr. VALENTI. Thank you, Mr. Chairman.

Chairman GIBBONS. Bill, do you have anything you want to say?

Mr. FRENZEL. Nothing. Rather just to welcome Jack and say I am sorry I missed his show.

Mr. VALENTI. I told the Chairman probably more than he wanted to know.

Chairman GIBBONS. No, I do not think so.

Mr. FRENZEL. I will enjoy reading it.

Mr. VALENTI. Thank you, Mr. Chairman.

Chairman GIBBONS. Thank you, thank you. We appreciate it.

Our next witness is the Honorable Bill Richardson of New Mexico.

Mr. Richardson, if you have your statement here, we will put it in the record. You can come forward and do whatever you wish.

STATEMENT OF HON. BILL RICHARDSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. RICHARDSON. Thank you, Mr. Chairman. Mr. Chairman, I would like to ask unanimous consent to place my entire statement and supporting documents in the record. And in the interest of time I will summarize.

Chairman GIBBONS. Without objection it is so moved.

Mr. RICHARDSON. I would also like to ask, Mr. Chairman, for permission to insert Congressman Nick Rahall's statement.

Chairman GIBBONS. Certainly.

Mr. RICHARDSON. He cannot be here today.

Chairman GIBBONS. Without objection we can insert it right after yours.

Mr. RICHARDSON. Mr. Chairman, first of all, I want to commend the subcommittee and the Ways and Means Committee for conducting these hearing on trade legislation. I think the focus is, first of all, unfair trade practices. I think that is going to be important and it is something that this Congress should do.

That is the first reason, Mr. Chairman, I wanted to appear before the subcommittee. The second reason is really a corollary to the first. I wish to alert the subcommittee to the problem which is particular to mining and milling industry, which right now is in horrendous shape in the Southwest, and that is foreign government orchestrated dumping and subsidies condoned in a fashion which evades current U.S. trade laws.

I will be asking the subcommittee to consider inserting two amendments that have been part of the Trade Law Modernization Act and Energy and Commerce. And for the committee's consideration I will be asking if you will consider putting them in your bill.

My remarks, Mr. Chairman, will focus on a relatively flagrant manifestation of this problem, Canadian practices relating to that countries uranium supply industry. The Government of Canada does not follow a laissez-faire or noninterference policy with respect to its uranium supply industry. To the contratry, Canada is heavily involved in its uranium industry. Producers are owned either by the Canadian Government, such as Eldorado, or by the Province of Saskatchewan, such as Saskatchewan Mining Development Corp.

The Canadian Government allocates requirements among Canadian producers excluding United States producers from its market and in general restricts United States ownership of Canadian uranium resources to 33 percent or less. Canada reviews the prices in terms of all uranium export contracts.

The Canadian Supreme Court has held that Canadian uranium products are immune from Canadian antitrust laws. In addition, Mr. Chairman, Canada has also heavily underwritten its uranium industry. I do not mean the typical kind of things governments do to support economic development such as the construction of roads and schools and so forth. Instead I refer to direct infusions of cash or cash equivalents. In the last few years Canada and it is provinces supported in excess of $1 million under Canadian uranium producers.

Mr. Chairman, in addition to that there is a very significant price differential between Canada's high home market prices and Canadian prices down in the United States. And unlike the United States, Canada requires its nuclear utilities, the principal one of which is Ontario Hydro, to secure their uranium supplies years in advance.

In other words, Mr. Chairman what then happens is that the price is paid by the entity in the neighborhood of four times the price at which Canadian uranium is being sold on the U.S. market, in excess of $60 as compared to $15 per pound. The net effect of this situation, Mr. Chairman, is that import commitments for uranium from Canada into the United States are growing rapidly.

Although other factors are also involved, less than 2,000 workers remain in the U.S. uranium industry compared to about 22,000 a few years ago. The United States used to be self sufficient in uranium. Market analysts, including the U.S. Department of Energy, now project that U.S. dependency on foreign uranium in the range of 7 percent and more in a few years.

The next question is what should be done? I believe that two narrow amendments to the U.S. antidumping statute would be appropriate. The first would address situations where a country insulates severe price discrimination and dumping simply by hiding behind some special contracting policy. This amendment would allow long-term contract prices in the exporting countries home market to be compared to prices in the United States where the exporting country requires as purchasers the contract on a long-term or other governmentally specified basis.

The second amendment would address governmental allocation mechanisms reserving domestic requirements to certain producers and allocating foreign markets to other producers. This amendment will allow cross country comparisons of prices for purposes of calculating dumping margins in appropriate instances.

These two amendments are imminently fair, enjoy the support of the oil, chemical, and uranium industries, and will assist in filling a gap in current U.S. antidumping law.

I would wish to express that the amendments which I have in mind would be discretionary in nature. They would not violate GATT. They would not require the administering authority, that is the Commerce Department, inevitably to make the comparisons to which I have alluded.

However, they would be applicable in the face of governmental allocation and similar policies and thus prevent the unfair circumvention of U.S. trade law on a technicality. The amendments are much needed tools in addressing persistent problems in raw materials trade. And I would like to emphasize they do not deal with any kind of protectionist quotas. They are just simply saying enforce existing trade practices.

Finally, Mr. Chairman, I would like to draw the attention of colleagues on the Ways and Means Subcommittee to a growing problem for New Mexico and the Nation, especially Southwestern States. And that is the nonpermanent marking of certain items imported into the United States, specifically imported jewelry. The nonpermanent marking of jewelry is of particular importance to the Southwest where we have a thriving Native American jewelry industry.

This industry has been severely damaged recently by the increased importation of imitation Native American jewelry largely from Taiwan and the Philippines. Under current trade law many jewelry imports are not permanently marked. I successfully passed an amendment to the Trade Law Modernization Act on Energy and Commerce which would require permanent marking of most silver jewelry imported into the United States and I would hope that the subcommittee would consider similar languages in markup trade legislation this session.

In summary, Mr. Chairman, I would just hope that this committee in its broad view of unfair trade practices look at a negotiated area of the American economy, and that is the mining and milling industry. I know that there is sensitivity on this issue, I know that right now the domestic mining industry is in deep trouble. And in terms of numbers and workers we cannot compete with other industries.

But I would respectfully request, Mr. Chairman, as you proceed in the markup of your legislation, that you consider incorporating some provisions that simply deal with unfair trade practices that enforce the level playing field that so many have talked about and which do not exist right now.

The domestic mining industry in this country is near death. You can be talking about copper, uranium, phosphate, or all kinds of metal products. We just want a fair trading field, Mr. Chairman. And I wish that this subcommittee would consider some of these provisions that I have suggested.

Thank you, Mr. Chairman.

[The prepared statement follows:]

Testimony of Congressman Bill Richardson
Trade Subcommittee
Ways and Means Committee

Mr. Chairman, I have requested an opportunity to testify for two reasons: first, to express my strong support for reasonable and responsible trade legislation. I thoroughly agree with Chairman Rostenkowski that "trade policy can't be written with a pair of six shooters." However, like the Chairman, and I am certain all the members of this Subcommittee, I am concerned that we are facing a $150 billion trade deficit. Among the many factors contributing to this situation are foreign trade practices which may not be remediable under current trade law but which are clearly unfair, which serve no socially useful functions and which cost American workers their jobs. We should and we must revise our statutes to better address such unfair foreign trade practices.

My second reason for testifying is a corollary of the first: I wish to alert the subcommittee to a problem which is of particular concern to elements of the domestic mining and milling industry. That is foreign government-orchestrated dumping and subsidization condoned in a fashion which evades current U.S. trade laws. I will focus my remarks below on a relatively flagrant manifestation of this problem -- Canadian practices relating to that country's uranium supply industry.

The government of Canada does not follow a "laissez-faire" or non-interference policy with respect to its uranium supply industry. To the contrary, Canada is heavily involved in its uranium industry -- some of the principal producers are owned either by the Canadian government -- such as Eldorado -- or by the Province of Saskatchewan -- such as Saskatchewan Mining Development Corporation (SMDC).[1/] Moreover, the Canadian government allocates Canadian requirements among Canadian producers, excludes U.S. producers from its market, and in general restricts U.S. ownership of Canadian uranium resources to 33% or less.[2/] Canada reviews the prices and terms of all uranium export contracts.[3/] The Canadian Supreme Court has held that Canadian uranium producers such as Eldorado are immune from Canadian antitrust laws when they enter into agreements with other companies to restrict production or to raise prices on export sales.[4/]

Canada has also heavily underwritten its uranium industry. By this I do not mean the typical kinds of things governments do to support economic development, such as the construction of roads and schools and so forth. Instead, I refer to direct infusions of cash or cash equivalents. In the last few years, Canada and its provinces have poured in excess of $1,000,000,000 into Canadian uranium producers.

For example, Eldorado (which, as I said, is owned by Canada) was given $300,000,000 worth of uranium from the Canadian government stockpile, in return for which Canada received yet more stock in Eldorado, i.e., more paper. Moreover, according to Eldorado's annual reports, Canada "forgave" a $100,000,000 loan to an Eldorado subsidiary.[5/] SMDC's annual report indicates that the Province of Saskatchewan has provided $250,000,000 in so-called equity advances to the company and has provided or guaranteed certain SMDC long-term debts.[6/] The Province of Ontario, through a company owned by the Province, has advanced more than $600,000,000 interest free to two other Canadian producers.[7/] All this has contributed to increasing Canadian capacity and to lowering Canadian costs and business risks.

Canada provides additional support to its producers. For example, there is a very significant price differential between Canada's high home market prices and Canadian prices down here. Unlike the U.S., Canada requires its nuclear utilities, the principal one of which is Ontario Hydro, to secure their uranium supplies years in advance.[8/] The prices paid by Ontario Hydro in Canada are in the neighborhood of four times the price at which Canadian uranium is being sold on the U.S. market -- in excess of $60 as compared to $15 per pound.[9/] Indeed, Eldorado, the Canadian government uranium company,

recently signed a contract to deliver uranium to a U.S. utility for no more than $14 per pound.[10/] Canada's policy in effect allocates its uranium (especially its higher cost uranium) to its own utilities at high prices but makes its surplus uranium available in the U.S. at very low prices.[11/] Moreover, in the words of Marc Lalonde, speaking as Canada's Energy and Mines Minister, Canada is "strongly encouraging [Canadian] producers to export their surplus [to] the United States."[12/]

The net effect of this situation is that import commitments for uranium from Canada (and, incidentally, other countries) into the United States are growing rapidly.[13/] Although other factors are also involved, less than 2,000 workers remain in the U.S. uranium industry, as compared to about 22,000 a few years ago.[14/] The U.S. used to be self-sufficient in uranium. Market analysts, including the U.S. Department of Energy, now project a U.S. dependency on foreign uranium in the range of 70% or more in a few years.[15/]

This renders increasingly significant other aspects of Canadian policy. For example, Canada has an "upgrade-in-Canada" policy. Under this policy, Canada generally requires buyers of Canadian uranium to convert that uranium to uranium hexafloride at Eldorado's conversion facility.[16/] As more uranium becomes subject to Canada's upgrade policy, an obvious

concern is posed to the continued viability of the U.S. uranium conversion industry. In the longer run, the U.S. enrichment and fuel fabrication industries may also be threatened.

The next question is what should be done. I believe that two narrow amendments to the U.S. anti-dumping statute would be appropriate. The first would address situations where a country insulates severe price discrimination and dumping simply by hiding behind some special contracting policy. This amendment would allow long-term contract prices in the exporting country's home market to be compared to prices in the U.S. where the exporting country requires its purchasers to contract on a long-term or other governmentally specified basis. The second amendment would address government allocation mechanisms reserving domestic requirements to certain producers and allocating foreign markets to other producers. This amendment would allow cross-country comparisons of prices for purposes of calculating dumping margins in appropriate instances. These two amendments are eminently fair, enjoy the support of the Oil, Chemical, and Atomic Workers Union and will assist in filling a gap in current U.S. anti-dumping law.

I would stress that the amendments which I have in mind would be discretionary in nature. They would not require the

Administering Authority (that is, the Commerce Department) inevitably to make the comparisons to which I have alluded. However, they would be applicable in the face of governmental allocation and similar policies and thus prevent the unfair circumvention of U.S. trade law on a technicality. The amendments are much needed tools in addressing persistent problems in raw materials trade.

Finally, I would like to draw the attention of my colleagues to a growing problem for New Mexico and the nation -- the non-permanent marking of certain items imported into the U.S., specifically imported jewelry. The non-permanent marking of jewelry is of particular importance to the Southwestern United States, where we have a thriving Native American jewelry industry. This industry has been severely damaged recently by the increased importation of imitation Native American jewelry, largely from Taiwan and the Philippines. Under current trade law, many jewelry imports are not permanently marked. I successfully passed an amendment to the Trade Law Modernization Act which would require permanent marking of most silver jewelry imported into the U.S. and would hope the Subcommittee would consider similar language as they mark up trade legislation this session.

Mr. Chairman, Mr. Rahall was unable to attend this hearing today and asked that I request the Subcommittee's permission to have his testimony inserted in the record. I am sure Mr. Rahall would join me in thanking you for accepting our testimony and in complimenting the Subcommittee on its work on these vitally important issues. I look forward to the enactment of fair and reasonable trade legislation to address technical deficiencies in current trade laws, or novel but unfair trade practices not currently subject to our statutes.

1/ Compare Eldorado's Annual Report 1983 with SMDC's Annual Report 1982.

2/ U.S. Department of Energy, The Domestic Uranium Industry and Imports of Uranium at 36 (Feb. 23, 1981).

3/ See, e.g., Campbell, Exhaustible Resources and Economic Growth: The Case of Uranium Mining in Saskatchewan (a paper prepared for the Economic Council of Canada) (Sept. 1984) at 55.

4/ See The Queen v. Eldorado Nuclear Ltd., decided Dec. 15, 1983, Supreme Court of Canada Reports Service, Digest 1045.

5/ Eldorado's Annual Report 1981 at 2 and 25.

6/ SMDC's Annual Report 1983.

7/ See, e.g., Wall Street Journal, Oct. 8, 1981 ($600,000,000 interest free loan to Denison and Rio Algom); Nuclear Fuel, January 4, 1982 (same); Nuclear Fuel, March 28, 1983 (same).

8/ See, e.g., Campbell, supra, at 53 (production allocated so secure supply for 30 years); U.S. DOE, supra (15 year forward supply must be contracted.

9/ Nuclear Fuel, June 18, 1984 at 4-5 reports that Ontario Hydro will pay (Can) $73.40/pound in 1984, $80.00/pound in 1985, and $91-$98 per pouond in 1986-91. $80.00 Canadian for 1985 is equivalent to about $60.00 U.S. These prices do not appear to include repayment of the $600,000,000 cash advance. Ontario Hydro is "recovering" this advance at a rate of approximately $35,000,000 per year. (1985 Ontario Rate Submission at 25 indicates expenditures of $187,000,000 but Fuel Supply Activity Report shows payment of only $150,000,000. The difference is about $35,000,000. Ontario Hydro's 1983 Fuel Activity Report shows purchases of 3,250,000 pounds per year. Given the recovery rate, this works out to an additional approximately $10.00 per pound on the price Ontario Hydro pays for uranium. According to Nuexco, Canadian producers exported uranium to the U.S. at as low as the $15 range in 1984. ($15.46 for Eldorado and $15.68 for SMDC). Nuclear Fuel reports similarly low levels in 1985.

10/ Nuclear Fuel, Jan. 27, 1986, at p. 12.

11/ See Cong. Research Service Memo, Ellis to Bingaman at 7 (Sept. 27, 1984).

12/ Notes for an Address, The Honorable Marc LaLonde, June 23, 1981.

13/ See Testimony of Bill Stevens on behalf of the American Mining Congress, Review of the Status of the U.S. Domestic Uranium Mining and Milling Industry, Hearing before the Energy Research and Dev. Subcomm. of the Senate Comm. on Energy and Natural Resources at 80 (Sept. 12, 1984).

14/ See Testimony of Bill Stevens on behalf of the American Mining Congress, Uranium Enrichment and Uranium Supply, Hearing before the Subcomm. on Energy and the Env. of the House Interior and Insular Affairs Comm. (March 21, 1985); Testimony of Edward Farley on behalf of Atlas Corporation, same.

15/ See, e.g., DOE EIA, Domestic Uranium Mining and Milling Industry, 1984 Viability Assessment (1985); Colorado Nuclear Corporation, Review and Critique of Domestic Uranium Mining and Milling Industry: 1983 Viability Assessment at 9 (March 1985).

16/ See, e.g., Nuclear Fuel, Feb. 27, 1984, at p 4. See also Reid, The Policy Environment for Saskatchewan Uranium Producers, at 11 (1984).

Copies of these documents will be placed on file with the Trade Subcommittee.

Chairman GIBBONS. I appreciate your statement. I will ask the staff to pay particular attention to those suggestions that you have made and incorporate them into the committee bill.

I would also ask you to take a look at page 115 of the discussion draft where we treat the subject of uranium hexachloride. It is on page 115 of our discussion draft. It is also the same language as is in H.R. 2236 that had been favorably considered by this subcommittee. And let us have whatever views you have on that.

I am aware of the problems that the mining industry is facing. I have had some connection with it in my own district and in my own State and have seen the bitter results that have flowed into your area of the United States.

I will ask the staff here again to see what could be done with those two specific amendments that you suggested there.

Mr. RICHARDSON. I thank the chairman.

Chairman GIBBONS. I was not following as closely as I would like to. But we will pull them out and look at them.

I am surprised to hear that the marking laws are not sufficient. You mean there is jewelry coming into this country in the way of silver that is not appropriately marked?

Mr. RICHARDSON. That is right, Mr. Chairman. And I think here is another problem of staffing of Customs. We have tried through public education and through notification to other countries of much fake import jewelry coming into the United States, but the bottom line has been the indelible markings. My amendment would simply require a delible marking on each jewelry silver item unless it is much too small or unless it is financially unfeasible. And I think that is fair.

We are getting tremendously flooded especially in the Southwest by Philippines and Taiwan jewelry, turquoise jewelry that has the silver handles. It is crippling the industry very much.

We are not asking for protectionist moves to stop these imports. We are just asking for mechanisms to better control those fake imports coming in.

Chairman GIBBONS. Is your problem mainly with the enforcement of the current law, or is it the current law is not sufficient?

Mr. RICHARDSON. I think it is a combination of both, Mr. Chairman. I think even if we had enforcement of current law, even if we had more people at customs to look at these. They simply told us they had no time, they had other priorities naturally.

I think it is a question of if you put the marking on, I think there would be a regression of imports coming into this country. And I do not think that is a very unfair thing to ask for, just to mark the made in Taiwan or made in the Philippines or just identify it. I think they are the kind of initiatives that are simply fair trading practices. And I would hope this committee considers that.

Chairman GIBBONS. Mr. Schulze.

Mr. SCHULZE. I would like to thank our colleague, Mr. Chairman. I have no questions.

Chairman GIBBONS. Mr. Pease.

Mr. PEASE. Mr. Chairman, I have no questions either. I think our colleague very clearly has a problem and some suggested solutions, and I would like to thank him.

Mr. RICHARDSON. Thank you, Mr. Pease.

Chairman GIBBONS. Bill.

Mr. FRENZEL. Mr. Chairman, I would like to have a chance to review the gentleman's amendments, but I do have a question.

You would compare in your first uranium amendment, page 5 of your testimony, you would compare long-term contract prices in the exporting country's home market to prices in the United States. Isn't this getting back to the American selling price as a standard which we have left some years ago at the request of all of our trading partners?

Mr. RICHARDSON. That is correct, Mr. Frenzel. My aim, I might state, is generic. I think it is the kind of mechanism that simply ensures a more equal playing field. I think the Canadian problem—I think I was with you when we talked about the Canadian problem in hearings, that a lot of the long-term contracts through proceeding with those long-term contracts, that are able to construct pricing mechanism, which I think in the long run leave many of our products not just in mining uncompetitive, but that is what I am asking in that first amendment.

Mr. FRENZEL. Thank you.

With respect to the marking amendment, what is the matter with the markings on the imported jewelry at this moment?

Mr. RICHARDSON. Well, the problem in many cases is that the markings are being removed. Most of those products coming in, you can see the erasure of those markings, and you cannot see anything. As a result, a lot of turquoise and silver jewelry is coming in and it is impossible to detect.

Mr. FRENZEL. How are the U.S. products marked?

Mr. RICHARDSON. Well, U.S. products are marked. They are marked sort of like the circle and arrow like on a cigarette. I cannot draw it for you, but they are appropriately marked.

Mr. FRENZEL. But it does say made in the U.S.A. on the small pieces of jewelry?

Mr. RICHARDSON. Yes, yes. There is——

Mr. FRENZEL. It is a little harder to say made in the Philippines on a small piece of turquoise.

Mr. RICHARDSON. They can say made in PI, whatever it may take.

Mr. FRENZEL. I think we want to be sympathetic, but we have one member that wants to stamp each Iranian pistachio in letters 11-feet tall. And that is not what you are suggesting.

Mr. RICHARDSON. That is right.

Chairman GIBBONS. I wish you would have some of your technical staff contact our technical staff. They have some questions about some of the language, just exactly what is intended.

Mr. RICHARDSON. What is the name of the person?

Chairman GIBBONS. Janet Nuzum.

Mr. RICHARDSON. Certainly, Mr. Chairman.

Chairman GIBBONS. Thank you very much.

Mr. RICHARDSON. Thank you, Mr. Chairman.

Chairman GIBBONS. We have a panel from the U.S. Department of Commerce, Mr. Kaplan, and from the Office of U.S. Trade Representative, Mr. Alan Holmer. I know a Holmer Alan, but he is a rather stout fellow.

All right, gentlemen, proceed as you wish.

STATEMENT OF GILBERT B. KAPLAN, DEPUTY ASSISTANT SECRETARY FOR IMPORT ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Mr. KAPLAN. Thank you, Mr. Chairman.

My name is Gilbert Kaplan. I am Deputy Assistant Secretary of Commerce for Import Administration. I would like to thank you for inviting us here today. I appreciate the opportunity to meet with you on the subject of possible amendments to the antidumping and countervailing duty laws.

If I could leave you with only one impression today, it would be that the antidumping and countervailing duty laws work. They provide effective, tangible relief to U.S. industries injured by unfairly traded imports. And furthermore, I believe that we administer these laws fairly, effectively, and aggressively to the benefit of all interested parties.

This administration believes in the ability of U.S. industries to compete internationally. However, we are equally insistent that this competition exist on a fair basis. The antidumping and countervailing duty laws enable us to offset unfair trade practices without insulating U.S. industry from the beneficial effects of fair international competition.

To give you an indication of the effectivenessof these laws, Mr. Chairman, let me cite a few statistics. The number of petitions filed has increased from 53 in 1980, when the administration of these laws was transferred to the Commerce Department, to 147 in fiscal year 1985. Between 1980 and the end of 1985, Commerce investigated 579 antidumping and countervailing duty cases. While 31 percent of these cases were withdrawn by petitioners, only 6 percent were terminated because of negative determinations by Commerce. In all of these investigations we have never missed a deadline. The law does work quickly and it does work effectively.

We are currently investigating some 50 cases. And we have projected conducting 140 to 150 investigations in fiscal year 1986. Also there are currently 112 antidumping and 81 countervailing duty orders and suspension agreements in effect. In addition, in Import Administration, the section of Commerce that does the AD and CVD cases, we have a staff of 54 people administering 18 steel export restraint agreements, most of which resulted from AD and CVD cases originally.

We have provided relief from unfairly traded imports to every sector of the American economy. We have investigated products as diverse as steel wire rod and galvanized steel sheet, frozen lamb meat and frozen raspberries, cellular mobile telephones, cell site transceivers, fresh Atlantic ground fish, pots and pans, mirrors, float glass, and semiconductors.

In fact, the President's first action under the strike force, which this administration created to deal with unfair trade, was the self-initiation of an antidumping investigation on 256K dynamic random access memory chips from Japan. That case has, as you probably know, gone past a preliminary determination and we are headed toward a final determination.

Import administration has been flexible, innovative, and open to change in its administration of the unfair trade laws. Our approach

has not been a timid one; rather it is one that ensures that the unfair trade laws fulfill their purpose. I would like to just cite a few examples of the way in which we have developed methodology in the last few years in the context of existing legislation. And I think these are important because they indicate that we do not need at this point to change the law to deal with new problems that have arisen.

I think one case I would point out to you and to your staff concerns cellular mobile telephones from Japan. In that case we broke a lot of new ground in dealing with high-technology problems. We looked very carefully at how inputs are valued in cost of production cases. This is the absolutely critical part of doing a cost of production case.

We sent teams abroad to try to determine how much it cost to make certain high-technology goods. We are constantly confronted with an array of statistical and accounting data. We have taken a very aggressive approach in looking at how to value inputs and how to determine exactly what cost of production is.

Also in that same case we dealt with the issue of circumvention of orders. This is a problem some of your legislation is meant to deal with. I think we have already taken some significant steps in that regard. In the cellular mobile telephone case we defined a class of merchandise under investigation to include subassemblies as well as the finished cellular mobile telephones. This was to prevent the circumvention of the order by so-called knockdowns immediately after the order went on the books.

In the countervail area, we have looked recently at fixed duty drawback systems and determined tests for countervailing those. I think of particular importance is a case that we came out with yesterday concerning carbon black from Mexico. This was our first annual view of the carbon black decision. Under that decision we found that carbon black feedstock was not generally available, thus reversing our decision in the 1983 final determination.

In making that decision, we said we determined there are too few users of carbon black feedstock for us to consider it as provided on a generally available basis.

Since these laws work and they work well, and because they were only recently amended in 1984, I believe that further tinkering is not necessary at this time. While some problems still exist, I fear that continuous amendments to these laws will end up making them less effective overall.

We will continue to consult with your staff on nonmarket economy issues. This is an area where I think amendments may be appropriate. However, we oppose a number of other legislative proposals that we have heard so far.

In my statement, which I am sure has been submitted for the record, I go over some issues concerning natural resources. First of all, I think we ought to see how this carbon black decision works out.

Also, I do not want to repeat what Ambassador Yeutter said several days ago, but I want to reiterate two of his points. The specificity test that we have now serves U.S. interests well. Also, two concepts set forth in section 151 of the draft bill, that is the concept of fair market value and also the concept of market clearing price, in

my view would be unadministerable. There would be no way for us as the administering body to determine what those measures actually are.

In my statement I also review a diversionary dumping proposal, which we cannot support, a persistent dumping proposal, a proposal regarding components in finished products, and I briefly go into some discussion of nonmarket economies. As I said, we do want to work with you and your staff on that issue.

There are a number of proposals which have been made, some relating to some kind of average price, some relating to injury, others relating to some sort of benchmark derived from U.S. price. All of these have possibilities and at the same time problems.

We have found over the last year in trying to use administratively average price, average import price model, that it may be almost impossible to do. I do not think there really is such a thing as average import price. And we have had difficulty finding it in a large variety of cases where we have tried to apply that methodology.

On persistent dumping, I think we already have taken significant steps to combat significant dumping in various industries. On semiconductors, one of the reasons we self-initiated a 256K case was because after the filing of the 64K DRAM case, we saw there was a significant problem in this industry. And I think we acted aggressively in trying to deal with the alleged persistent dumping.

Similarly, on cellular mobile telephones, which I mentioned before, where we had one product, cellular mobile telephones, which we saw had been dumped, we expanded our order to cover a potential dumping problem in a related product which would be simply the subassemblies of that same telephone. So that really is an effort to expand the law to deal with the persistent dumping problems that you are concerned about.

In sum, I do not believe we support amendments other than for nonmarket economies at this time.

I would like to conclude just by talking briefly about a separate issue. I would like to call your attention specifically to the announcement by Secretary Baldrige, Ambassador Yeutter, and Attorney General Meese a week ago Monday of the administration's program to enhance protection of intellectual property rights.

This program was recommended by the President's trade strike force, endorsed by the Economic Policy Council, and approved by the President. We are proposing a comprehensive strategy to combat inadequate intellectual property protection, including changes to section 337, accelerated bilateral consultation on the inadequacy of foreign intellectual property protection, possible denial of GSP benefits, denial of section 301 actions, continued multilateral efforts, and a comprehensive statement of protection of U.S. intellectual property rights.

Particularly in view of Mr. Valenti's statement, I would like to draw your attention to the initiatives we have taken. And I think it does deal with some of those problems. Thank you very much.

I certainly would would be happy to take questions. I think Mr. Holmer wants to make a brief statement as well.

[The prepared statement follows:]

TESTIMONY OF GILBERT B. KAPLAN
DEPUTY ASSISTANT SECRETARY FOR
IMPORT ADMINISTRATION
DEPARTMENT OF COMMERCE
BEFORE THE
SUBCOMMITTEE ON TRADE
U. S. HOUSE OF REPRESENTATIVES
APRIL 15, 1986

Mr. Chairman and members of the Subcommittee, I am pleased to appear before you today to discuss comprehensive trade law reform as it relates to the antidumping and countervailing duty laws.

If I could leave you with only one impression today, it would be that the antidumping and countervailing duty laws work; they provide effective, tangible relief to U.S. industries injured by unfairly traded imports. Furthermore, I believe that we administer these laws fairly, efficiently, yet aggressively, to the benefit of all interested parties.

This Administration believes in the ability of U.S. industries to compete internationally. However, we are equally insistent that this competition exist on a fair basis. The antidumping and countervailing duty laws enable us to offset unfair trade practices without insulating U.S. industries from the beneficial effects of fair international competition.

To give you an indication of the effectiveness of these laws, let me cite a few statistics. The number of petitions filed has increased from 53 in 1980, when the administration of these laws was transferred to the Commerce Department, to 147 in fiscal year 1985. Between 1980 and the end of 1985, Commerce investigated 579 antidumping and countervailing duty cases. While 31 percent of these cases were withdrawn by petitioners, only 6 percent were terminated because of final negative determinations by Commerce. In all of these investigations, we have never missed a deadline. The law does work quickly; the law does work effectively.

We are currently investigating some 50 cases, and we have projected conducting 140-150 investigations in fiscal year 1986. Also, there are currently 112 antidumping and 81 countervailing duty orders and suspension agreements in effect. In addition, in Import Administration we have a staff of 54 people administering 18 steel export restraint agreements, most of which resulted from findings of dumping and subsidization against foreign producers of steel.

We have provided relief from unfairly traded imports to every sector of the American economy. We have investigated products as diverse as steel wire rod and galvanized steel sheet, frozen lamb meat and frozen raspberries, cellular mobile telephones and cell site transceivers, fresh Atlantic groundfish, pots and pans, mirrors, float glass, and semiconductors.

In fact, the President's first action under the Strike Force, which this Administration established to identify and act upon unfair trade practices, was Import Administration's self-initiated antidumping investigation on 256K dynamic random access memory chips from Japan.

Import Administration has been flexible, innovative, and open to change in its administration of the unfair trade laws. Our approach is not a timid one, rather it is one that ensures that the unfair trade laws fulfill their purpose. I would like to take a few minutes to cite a few examples of ways in which Import Administration has adapted and developed its methodology to handle new situations. We have made these administrative changes successfully, within the framework of existing legislation.

One involves valuation of inputs in calculating the cost of production in antidumping investigations. Companies have presented us with a bewildering variety of ways to value inputs, most of which are in accordance with generally accepted accounting principles or are common practice in the country under investigation. We have not limited our calculations by these principles, however, if these principles permit a company excessive latitude from the Department's point of view. For example, in the case on cellular mobile telephones from Japan, we looked beyond generally accepted accounting principles when dealing with research and development costs. Such costs were incurred in the early stages of marketing the product, but we decided that the effects of research and development extended beyond the early sales of the product. Therefore, we amortized these costs over a reasonable period of time just as one would amortize depreciation of equipment.

A second area where the Department has broken new ground is in defining carefully the scope of an investigation or review so that an order cannot be easily circumvented. The cellular mobile telephone case is again an example; the Department determined that subassemblies were the same class or kind of merchandise as the cellular mobile telephones and kits that were named in the petition. We also concluded that we have the inherent authority to establish the parameters of an investigation in order to carry out our mandate to administer the law effectively and in accordance with its intent.

We are constantly refining our past practices to be responsive to change while remaining fair to all sides. We recently encountered a new type of duty drawback system, "fixed" duty drawback, where the drawback amounts are based on the average experience of all firms in a given industry, rather than on a firm-by-firm basis. The Department verified how these systems work and determined that we should apply a linkage analysis similar to that used in indirect tax rebates to determine whether the drawback constituted a subsidy. This is a tough test for a foreign government or company to pass because it requires that a government conduct a study to analyze the proper level of drawback for all inputs, demonstrate the accuracy of the study, and update it periodically.

We have also amended our practices in antidumping cases involving hyperinflationary economies to take into account the problems of determining price discrimination in such economies. Instead of

making price comparisons based on a weighted average of home market prices for a six-month period as we normally do, we use monthly weighted-average prices in countries such as Brazil, Argentina and Israel.

Since these laws work well and were only recently amended and improved, further tinkering is not necessary at this time. While some problems still exist, I fear that continuous amendments to these laws will end up making them less effective overall.

We will continue to consult with your committee and the private sector with respect to the problem presented by nonmarket economies. However, we oppose a number of other legislative proposals we have heard of so far. Let me share with you my concerns about some of these proposals.

I am sure you are all aware of the Administration's opposition to section 151 of the discussion draft bill regarding natural resources. This legislation represents a major departure from longstanding U.S. and international practice regarding the definition of a subsidy. While we believe that the countervailing duty law can offset many unfair benefits that governments provide to certain industries, it is counterproductive to attempt to stretch the countervailing duty law to solve all potential trade problems. This proposal would drastically weaken the ability to distinguish between government actions to promote the competitiveness of certain

industries, and those to improve general economic development in a country (such as accelerated tax depreciation, dams, Tennessee Valley Authority-type projects, rural electrification programs, public highway systems, and other broad-reaching government intervention).

I don't want to cover the same ground that Ambassador Yeutter did a few days ago, but I do want to reiterate two points he made: 1) the "specificity" test that is now present in the U.S. countervailing duty law serves U.S. interests well; and 2) the concepts set forth in the section 151 proposal on "fair market value" and "market clearing price" would be unmanageable.

To conclude on this point, not only would we almost certainly be subject to challenge within the General Agreement on Tariffs and Trade (GATT), which might authorize retaliation against us for such a provision, but our trading partners would probably enact similar provisions.

Another suggestion for new legislation involves "diversionary" or "input" dumping. This involves the use of an input which has been dumped to produce merchandise under investigation. I am sympathetic to the commercial problem involved here. However, the legislative proposals I have seen are unacceptable.

The idea behind the antidumping law is to measure whether a foreign producer is price discriminating. Where the price of an input sold by another, unrelated party is involved, the foreign producer could not avoid dumping by changing its own pricing behavior. In addition, the foreign producer would never know, from the record in the prior antidumping case on the input, whether he was buying a "dumped" input because the foreign market value for the input is a confidential number. Moreover, since the timetable for the cases would not coincide, the input's foreign market value would almost always be out of date. Using stale foreign market value data, we might never find diversionary dumping, assuming prices of inputs have been rising due to inflation or normal market forces. There are also problems in the current proposals regarding the measure of foreign market value of the input, when an antidumping duty order has been revoked or suspended.

Another proposal concerns persistent dumping and subsidization, and that proposal would eliminate the International Trade Commission's (ITC's) preliminary injury determination when the ITC had made a prior injury determination in either an antidumping or countervailing duty case on the same merchandise from another country within the preceding year. This provision is inconsistent with our GATT obligations, allows an injury determination to be based on stale data, perhaps over a year old, and will not save petitioners or the ITC much work in the end. Petitioners would still be required to collect the same information they are currently required to provide, so that the ITC could make its final injury determination based on up-to-date data.

Allowing component manufacturers to file petitions against finished product imports is another example of a proposal which we believe is ill-founded. The GATT requires that cases be brought by producers of the "like product." In the one instance where this definition has been stretched to include the producers of the input--wine grape growers being considered part of the wine industry--our trading partners immediately requested the GATT to rule whether this legislative change is consistent with the GATT. Since there is no reason to believe their actions would differ in other instances, the result of this change might well be GATT-sanctioned retaliation against U.S. exports.

One point we need to remember is that what we do to other countries, they are likely to do to us. Thus, similar provisions enacted by our trading partners could subject U.S. exports to severe penalties abroad. Moreover, as U.S. exports recover, dumping cases against U.S. exports, in all likelihood, will increase. At the end of June, 1985, we had 191 antidumping investigations and orders in progress against 38 foreign countries. Our fellow Antidumping Code trading partners had 71 investigations and orders in progress just against United States products.

No examination of proposed antidumping and countervailing duty law changes would be complete without a few words on these laws as they relate to nonmarket economies. The Administration has long been on record as supporting reform of the unfair trade laws as they apply to nonmarket economies--so-called "NMEs." Most recently, on

September 23, 1985, President Reagan indicated that it would be useful to reduce the uncertainty inherent in these cases, as they are currently administered.

A number of legislative proposals in this area have been introduced in recent years. These have generally relied on some sort of average price of imports from market economies as the benchmark against which the NME prices to the U.S. would be compared.

Within the authority we have under the current statute, we have used published import statistics for calculating foreign market value when no surrogate country has been willing to cooperate in the investigation. Our experience in using this data has been disappointing.

Among the problems we have encountered are "basket" TSUSA categories, which include value and volume data on many products in addition to the product under investigation, and reporting errors. Moreover, use of these data may result in comparing sales in different time periods and does not permit adjustments for such things as credit terms. Therefore, we are less enthusiastic than we once were about an approach that relies on published import statistics.

The Administration is currently considering other alternatives, and we hope to come forward with an approach that is workable, fair and which reduces the uncertainty of these proceedings for both petitioners and respondents.

On a separate issue, I would like to call your attention to the announcement by Secretary Baldrige, Ambassador Yeutter, and Attorney General Meese a week ago Monday of the Administration's program to enhance protection of intellectual property rights. The program was recommended by the President's Trade Strike Force, endorsed by the Economic Policy Council, and approved by the President.

The Administration is proposing a comprehensive strategy to combat inadequate intellectual properly protection, including changes to section 337, accelerated bilateral consultations on the inadequacy of foreign intellectual property protection, possible denial of Generalized System of Preferences benefits, possible additional section 301 actions, continued multilateral efforts to improve intellectual property protection, and the "Administration's Statement on the Protection of U.S. Intellectual Property Rights Abroad."

The legislative proposal regarding section 337 will simplify the use of this law by eliminating the injury requirement and the requirement of showing an efficiently and economically operated U.S. industry as a precondition for relief where the International Trade Commission has found patent, trademark or copyright infringement.

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The proposal will also make cease and desist orders available in addition to exclusion orders and will increase the penalty limit for their violation, and make certain procedural and technical changes in this law.

As Secretary Baldrige said when this program was announced: "The legislative proposals are an integral part of the Administration's strategy to address the growing threat to U.S. competitiveness of counterfeit and pirated goods, and they demonstrate our commitment to making the international trading system work."

Thank you for your attention. I would be pleased to answer any questions you may have.

Chairman GIBBONS. Certainly we want to hear from him.

STATEMENT OF ALAN F. HOLMER, GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Mr. HOLMER. Mr. Chairman, thank you. There are a few themes that emerge in the administration's response to the antidumping and countervailing duty proposals.

First, the laws are being administered effectively and aggressively.

Second, most of the proposals under consideration would violate our international obligations in the GATT, the subsidies code, and the antidumping code. Why do we care? Principally for two reasons. First, there has been a lot of discussion during the course of these hearings about the strong desire to have the United States lead the rest of the world in improving international trading rules. We support that objective. But the last thing we should do if we want to maintain a leadership position internationally is to make formal commitments that we walk away from the minute they become inconvenient.

The second reason we should be concerned about violating our international obligations is because we will merely be shifting the trade problems of our import-sensitive industries onto the shoulders of U.S. exporters. We will be taken to the GATT, as happened soon after the wine provision was enacted in the 1984 trade bill. We will lose, as happened in the wine case, and our trading partners will be legally authorized by the GATT to retaliate against U.S. exports.

Finally, if these changes are enacted, our trading partners will enact mirror legislation of their own. Take, for example, proposals to ban all future imports by a company which is engaged in multiple acts of dumping. Which country leads the world in the number of antidumping cases which have been filed against it? The United States.

We should exercise great care before taking actions which would impact very negatively on U.S. exporters who may have dumped unknowingly because of exchange rate fluctuations or because they were unable to accurately predict how a foreign government would compute its costs of production. As the dollar goes down and exports go up, we should avoid placing additional hurdles in front of U.S. exporters.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF ALAN F. HOLMER, GENERAL COUNSEL
OFFICE OF THE U.S. TRADE REPRESENTATIVE
BEFORE THE INTERNATIONAL TRADE
SUBCOMMITTEE OF THE
HOUSE WAYS AND MEANS COMMITTEE
APRIL 15, 1986

Mr. Chairman, Members of the Subcommittee, I appreciate the opportunity to testify before you on reform of the antidumping and countervailing duty laws.

Last September, in setting forth the Administration's trade policy, President Reagan stated:

> Our commitment to free trade is undiminished. We will vigorously pursue our policy of promoting free and open markets in this country and around the world. We will insist that all nations face up to their responsibilities of preserving and enhancing free trade everywhere. But let no one mistake our resolve to oppose any and all unfair trading practices. It is wrong for the American worker and the American businessman to continue to bear the burden imposed by those who abuse the world trading system.

We have carried out these commitments. We are pushing forward with work on a new round of trade negotiations to strengthen and expand the GATT. We have joined with our G-5 partners to address the high value of the dollar and encourage more realistic exchange rates.

At the same time, we have taken strong action to counter unfair trading practices and to enforce our import relief laws. In his testimony earlier this week, Ambassador Yeutter reviewed

the strong and unprecedented actions taken by the U.S. Government under sections 301 and 305 of the Trade Act of 1974 and section 307 of the Trade and Tariff Act of 1984. We have used our section 301 authority aggressively to eliminate foreign barriers to trade and to pry open overseas markets for American exporters.

At the same time, as Mr. Kaplan notes in his testimony this morning, we have not hesitated to enforce our laws against foreign governments and firms that seek an unfair competitive advantage in our market through dumping or government subsidies. Over the past 5 years, the Department of Commerce has conducted more antidumping and countervailing duty investigations and issued more antidumping and countervailing duty orders than at any comparable period in our nation's history. The large number of companies seeking antidumping and countervailing duty relief is proof that our industries have confidence in the administration of our laws and the effectiveness of our remedies.

Mr. Chairman, the trade laws are a tribute to the long and productive relationship between the House Ways and Means Committee and the Executive Branch. Over the years, we have worked with you to enact a strong and effective set of remedies for providing relief to industries injured by unfairly traded imports. Our statutes currently ensure a fast, fair, and impartial investigation of allegations that foreign companies are engaged in dumping or benefiting from government subsidies to the detriment of U.S. companies. If unfairness is found, offsetting duties are

swiftly imposed. These laws have been fashioned painstakingly to strike a careful balance between the need to safeguard American firms and workers from unfair trading practices and at the same time to ensure that our consumers continue to benefit from legitimate import competition.

Only a short time ago, in the Trade and Tariff Act of 1984, the President and the Congress joined to enact a series of important reforms to the unfair trade laws. We undertook these reforms after exhaustive review of existing procedures and extensive hearings in this Subcommittee. The amendments streamlined antidumping and countervailing duty proceedings and made our import remedies more accessible to small businesses.

In considering any further amendment to the antidumping and countervailing duty laws, I believe that at least two threshhold questions should be asked:

1. Is the proposal consistent with our international obligations as set forth in the GATT, the Antidumping Code, and the Subsidies Code?

2. Is the proposal, on balance, in the long-term national economic interests of the United States?

The GATT, the Antidumping Code, and the Subsidies Code are the product of 40 years of international effort led by the United

States. The GATT and the Codes are not perfect, but they have brought an important measure of discipline to international trade. These documents define the rights of the United States and other nations insofar as we seek to regulate the movement of goods in international trade. Although the GATT sometimes does not go as far as we would like, this is not a justification for the United States to abandon its commitment to free trade or disregard its international obligations. We should not throw away 40 years of work over the temporary frustrations of the current trade deficit.

Our concern with international obligations also has a purely practical element. Much of our economy depends on GATT rules that lowered tariffs, protected tariff bindings, and opened up new export markets for our products overseas. Since the GATT was negotiated in 1947, world trade has increased over 10-fold. The United States has shared heavily in this prosperity. Today, over 15 percent of our manufactures are exported. One-third of our farm acreage is planted with crops for export. Despite our trade deficit, we remain the world's largest exporter.

Violations of the GATT and the Codes can carry a heavy price. If we violate our international obligations, other governments have a legal right to retaliate against our exports. In short, by violating the GATT, we put our access to overseas markets at risk.

I would like to turn now to some of the specific proposals that I understand may be considered by the Subcommittee.

1. Limitations on acceptance of "countries under the Agreement"

This proposal addresses the so-called "commitments policy." In the Trade Agreements Act of 1979, Congress amended section 701(b)(2) to authorize the President to grant an injury test under the U.S. countervailing duty law to countries to which the United States applies the 1979 Subsidies Code and countries willing to enter into "substantially equivalent" agreements. As a condition for applying the Code, we have insisted that foreign governments enter into "commitments" to eliminate Code-inconsistent export subsidies.

There are several proposals to restrict the President's authority to negotiate new Subsidies Code commitments. For example, section 601 of H.R. 3777 would set mandatory criteria for new Subsidies Code commitments, transfer authority over the commitments policy from USTR to the Secretary of Commerce, require the Secretary to review the commitments annually, and provide for the automatic loss of the injury test in the event of a violation.

This proposal is unnecessary. Some of the early commitments negotiated in 1979-80, in the first burst of enthusiasm over the Subsidies Code, were troublesome. A number of countries violated

commitments to phase out export subsidies. Since that time, however, we have consistently strengthened the commitments policy. In 1981-82, we began insisting on much stricter phase-out schedules and developed the concept of "provisional application," which gives us a basis in international law for withdrawing application of the Code and the injury test in U.S. countervailing duty actions. We now insist that commitments contain three elements: (1) phase-out -- a commitment to eliminate rapidly Code-inconsistent export subsidies within a reasonably short period of time, (2) standstill -- a commitment not to increase or expand existing programs or to introduce new programs, and (3) provisional application -- express recognition of the right of the U.S. to withdraw application of the Code.

We have not hesitated to exercise our right to withdraw the injury test in appropriate circumstances. When New Zealand renewed two export subsidy programs in violation of its commitment, we stopped applying the Code and did not provide an injury test in subsequent countervailing duty investigations of New Zealand products. Other countries are well aware that we watch the commitments closely and that we will not tolerate violations of promises to eliminate export subsidies.

As a practical matter, section 601 would unduly restrict the President's authority. The administration of the commitments policy requires a degree of flexibility. One cannot always mandate specific time schedules, since some countries, such as

Israel, may require more time to phase out subsidies. Finally, even if a country cannot meet a deadline, it is often willing to accommodate us in other ways. Spain, for example, agreed to lower payments under the Desgravacion Fiscal a la Exportacion (DFE) program by 15 percent to eliminate any subsidy in return for an additional year in which to replace the DFE with a Value-Added Tax (VAT). Withdrawal of the injury test is a drastic step and an element of discretion is necessary.

2. Input dumping

There have been several proposals, including section 610 of H.R. 3777, to create a remedy for so-called "diversionary dumping."

The Administration strongly opposes the input dumping proposals that have been introduced to date. Such measures would violate the Antidumping Code, be virtually impossible to administer, and risk mirror legislation against our exports.

Quite simply, the GATT and the Antidumping Code do not permit a signatory to take actions of the type contemplated in H.R. 3777 to penalize so-called input dumping. Under the GATT and the Code, the focus of an antidumping inquiry is on the home and export prices of a "like product." See GATT Article VI; Antidumping Code, Article 2:1. An input into a finished product

that has been substantially transformed in the country of origin is not "like" the finished product. Therefore, imposing additional duties because of an allegedly unfairly priced input is inconsistent with GATT and Code obligations.

The United States currently is blocking in the GATT an agreed interpretation of the Antidumping Code that states that the Code does not permit input dumping measures of the type contemplated in H.R. 3777 and other proposals. We are the only country that objects to the paper. Assuming we were to enact section 610, our trading partners would cite the virtual consensus in the Code as a basis for condemning the measure and as a justification for retaliatory measures.

Second, administration of an input dumping statute would require the cooperation of the company alleged to be dumping into a third country market. Such cooperation would almost never be forthcoming, since the company would expose itself to antidumping duties on its direct exports to the United States.

Finally, there is a real risk of "mirror legislation" against our exports. The United States is currently one of the most open markets in the world. We import large quantities of components and materials which are processed into manufactured products and exported abroad. To enact input dumping legislation would invite foreign mirror legislation. Our exporters would be placed in an administrative nightmare as they seek the coopera-

tion of foreign producers to avoid the imposition of duties.

3. Private Dumping Remedies

Other proposals would amend the Antidumping Act of 1916 to expand private rights of action for predatory dumping. S. 1655, For example, would loosen the requirements for liability under the 1916 Act in a number of ways.

The Administration opposes S. 1655 and similar proposals. We believe that such proposals are bad from the standpoint of both trade and competition policy.

From the standpoint of trade policy, the GATT and the Antidumping Code limit a signatory to one and only remedy, the collection of antidumping duties to offset the effects of injurious dumping. See Antidumping Code, Article 16:1; Subsidies Code, Article 19:1. Although the 1916 Act violates this rule, it was "grandfathered" when the U.S. signed the "Protocol of Provisional Application" to the GATT in 1947. For the United States to amend and expand the 1916 Act, however, would forfeit the protection of the "grandfather" clause and put the U.S. in clear violation of the GATT and the Code.

These proposals are equally flawed from the standpoint of competition policy. Several of the bills, such as S. 1655,

appear to be aimed at creating a windfall for U.S. plaintiffs through the use of presumptions, the elimination of normal intent requirements for antitrust liability, extreme discovery sanctions, and other devices, rather than addressing legitimate concerns regarding predatory dumping and its effects on competition.

Finally, I believe that U.S. plaintiffs already have an effective remedy for anticompetitive conduct by foreign firms, under the so-called "effects doctrine" of United States v. Aluminum Co. of America, 148 F.2d 416 (2d Cir. 1945). The antitrust laws reach anticompetitive acts abroad which harm competition in the United States. To the extent that foreign firms engage in predatory anticompetitive practices, the Sherman Act already gives U.S. firms an antitrust remedy.

4. Multiple offenders

The Administration opposes proposals to ban all future imports by a company that has engaged in multiple acts of dumping or to exact extra, punitive duties. Even if companies are found to have engaged in multiple dumping, the Code does not permit the use of exclusion orders or fines as a sanction. The Code provides that the remedy for dumping is the imposition of compensatory duties. It prohibits the use of additional sanctions, such as exclusion orders or other draconian penalties.

As a practical matter, I believe that the approach of

embargoes or multiple duties is of questionable fairness and could backfire against American exporters. First, dumping is not necessarily intentional. A determination of dumping involves a complex analysis of U.S. and foreign market pricing, production costs, product comparability, exchange rates, and accounting methodologies. Because reasonable people can often differ over these judgments, a company cannot necessarily predict whether it is potentially subject to dumping duties.

This approach would unduly penalize large multinational corporations which have broad product lines and engage in numerous import transactions in the U.S. Because these companies are involved in the sale of thousands of different products, there is a much greater likelihood of multiple findings. Indeed, the proposal could affect U.S. multinationals which have production operations overseas and import products for sale in the United States, since a number of U.S. firms are currently subject to antidumping orders.

Finally, the threat of mirror legislation is a very real one. The United States is not the only country with an antidumping law. Many governments have similar statutes, including the European Community, Canada, Australia, Sweden, India, Pakistan, Japan, and Mexico. Since our multinationals engage in numerous export transactions abroad, they would be potentially subject to copycat legislation in major foreign markets.

5. "Interested party" status for component manufacturers

I understand that there have been a number of propcsals to give components manufacturers "interested party" status so that they can file antidumping and countervailing duty cases. These proposals raise serious questions of Code-consistency. Article 5:1 of the Antidumping Code specifies, for example, that investigations should normally be initiated on the basis of a request from an industry consisting of producers of a "like product." Since a component is not a like product, it is difficult to see how these firms would have standing under the Code.

As a practical matter, such proposals invite conflict between manufacturers of finished products and their component suppliers. The manufacturer of the fully assembled "like product" is the one who is directly affected by dumped or subsidized imports.

6. Non-market Economies

Having indicated some of the problems with some of the pieces of trade legislation that have been introduced, I would like to close with a discussion of the problem of non-market economies. The antidumping and countervailing duty laws were designed to address trade distortions arising in a market economy. They assume that prices are meaningful and that profit is the guide to economic behavior. These assumptions do not apply to

non-market economies.

Our current law attempts to deal with this problem through the use of surrogate countries. This approach has proven extremely difficult to administer in a meaningful way.

We will continue to consult with your Subcommittee and the private sector with regard to the problem presented by non-market economies.

Mr. Chairman, I appreciate the opportunity to express my views. I would be happy to answer any questions you or the Members of the Subcommittee might have.

Chairman GIBBONS. You know, I would just as soon get rid of that cost of production and just go back to the old law. What do you think of that?

Mr. KAPLAN. I think you would find an awful lot of cases where we now find dumping margins that would go negative. I do not have the exact number, but I think the majority of recent dumping cases have been cost of production cases.

If prices are depressed both in the home market and in the U.S. market, there may be no dumping on a price to price basis. But every product may be sold below the cost of production. So you are permitting people to dump——

Chairman GIBBONS. You are not going to do that very long, or you will not be in business.

Mr. KAPLAN. You might do it long enough to steal away the entire United States market. And also——

Chairman GIBBONS. What company could dump that long?

Mr. KAPLAN. We certainly hear allegations that a lot of steel companies do it.

Chairman GIBBONS. Those are not just dumping cases, they are subsidy cases. I am not saying on subsidy go back. But I am saying on the antidumping, go back to the old law, just comparing prices. Would that not be a more easily administratable law than we have now?

Mr. KAPLAN. I think it would be easier, but I think it would be much less effective. Take a product like semiconductors.

Chairman GIBBONS. All right, let us take a product like semiconductors.

Mr. KAPLAN. Most of those cases at the preliminary stage turned into a comparison between U.S. price and the cost of production because those major semiconductor producers were selling below cost of production in their home market as well as the United States market.

Chairman GIBBONS. How long could a private company persist in that kind of practice?

Mr. KAPLAN. If it is a big enough company with a deep enough pocket, probably for a year or two while it is building up market share. It is sort of a long-term investment. Some of our own companies, particularly in the semiconductor area, do not have deep enough pockets to maintain that kind of selling practice for a year or two.

Chairman GIBBONS. What are the companies that are involved that are doing that?

Mr. KAPLAN. I cannot go into specifics because a lot of this data is confidential. But the respondents in the semiconductors cases are the major Japanese producers, NEC——

Chairman GIBBONS. I am trying to get to the targeting because I think there was government subsidy. Maybe that is a fundamental disagreement we have about whether a company is dumping or whether they are being subsidized. I think those Japanese companies are subsidized. I think it would be easier to prove that than prove dumping.

Mr. KAPLAN. I think we have looked at a lot of the Japanese companies in terms of subsidization and in terms of finding any

sort of direct cash benefits or any direct kind of subsidy that would be possible to quantify.

Chairman GIBBONS. I think you and I are looking at subsidies from a different point of view. I think the kind of thing Japan did, low cost loans as they did in those cases, give them domestic markets, protected domestic markets. All those things were subsidies. Those were governmental actions that protected those industries and allowed them to get up to speed.

You know, I think we have got the finger right on the point. You looked at them as if they were private concerns competing without any government support. And I look at them the other way around. I would like to hear you explain that. Was it government support in those cases, semiconductors?

Mr. KAPLAN. Let me mention one thing. In terms of below cost loans, that would be countervailing.

Let me ask Mr. Holmer to speak briefly about the 301 on semiconductors which raises some of the exact issues you are raising.

Mr. HOLMER. I don't know if these are subsidies or not. I do know that the administration would agree with you that the practices——

Chairman GIBBONS. They were grants of some sort; were they not?

Mr. HOLMER. The practices they have been engaged in are ones about which the administration has great concerns and which we are addressing very aggressively in the course of the section 301 investigation on semiconductors. And throughout those discussions, the prior insulated home markets, investment restrictions, alleged are subsidies for research and development, and many other programs are ones that we are aggressively pursuing with the Japanese.

Chairman GIBBONS. We do not even have a conversation going on with them now. How can you say we are aggressively doing something?

Mr. HOLMER. We are not having a conversation right this minute because our negotiators are hanging tough. I expect that will stay that way.

Chairman GIBBONS. How many years are we going to hang tough?

Mr. HOLMER. We have a deadline of July 10.

Chairman GIBBONS. What happens if they do not do anything?

Mr. HOLMER. That is a decision that Ambassador Yeutter and the President ultimately are going to have to make. I am confident that the record we have in 301 cases in the last 6 months bodes well for a strong resolution of this case.

Chairman GIBBONS. I am glad you see that. I do not see any evidence of it at all. I think one of our problems is that we are talking about the same thing, but talking about it from different points of view. But I think fundamentally you all do not want to follow the law, you would rather negotiate. And that is the problem that we have in dealing with these cases.

I am trying to get you to follow the laws that have been the laws of the United States since time immemorial. Any grant rendered to any entity is actionable if it injures, that is the law. But you all would rather negotiate.

Mr. KAPLAN. Well, sir, I think there are two——

Chairman GIBBONS. What do we have to negotiate in this other than the American industry? That is what is at stake here. We do not even have a talk going on with the Russians—excuse me, with the Japanese right now. It has been broken off. You are hanging tough some place down on Pennsylvania Avenue.

The imports are still coming in. American industry is still bleeding. Do not give me the tough talk. I want to see some action.

Mr. HOLMER. There are different levels at which talks take place. As you know, Ambassador Smith had discussions with the Japanese as recently as 2 or 3 weeks ago. We have representatives of the U.S. Government who are in Japan this week who are having discussions with the Japanese on the semiconductor issue.

Mr. KAPLAN. I would also say in terms of semiconductors, we have three ongoing dumping cases. The average margins on the three cases have ranged from 38 percent to 63 percent. I think both in the 301, which is a somewhat more discretionary remedy, and the enforcement of the laws which you are talking about, we have been as tough as we can be.

Chairman GIBBONS. Well, if you got those three cases and you have got those kind of margins, when are we going to see some——

Mr. KAPLAN. I think we have seen some. We have been watching the prices very carefully, and we have seen some significant solidifying prices and price increases.

Chairman GIBBONS. Have you taken any action?

Mr. KAPLAN. Yes, we have. We have suspended liquidation on any single semiconductor if it is 64K DRAM or above, which are all the dynamic random access memory chips, or any single EPROM chip that comes in. A bond has to be posted for the amount of the antidumping duty to get it across the border. We have taken that action.

Chairman GIBBONS. The problem with our law is we encourage people to cheat. And when we catch them, all they have to pay is what they would have to pay anyway. It looks like a law designed to say come on in and cheat, fellows. You put up a bond, and when we get all through and you have wiped out our industries, then you pay the difference. That is a design for disaster. I do not know how we ever keep up with that kind of law.

Mr. KAPLAN. I do not know——

Chairman GIBBONS. It is propounded with GATT. Is that it?

Mr. KAPLAN. I think it is not an invitation to dump at all.

Chairman GIBBONS. Sure it is an invitation to dump. All you have to do is pay what you would have paid had you not been caught cheating. There is no incentive not to dump in that kind of a process. Why should I not take predatory action against the market if the only penalty that I have to pay when I get caught is having to price my product appropriately anyway?

Mr. KAPLAN. I do not think on the whole that is an insignificant penalty.

Chairman GIBBONS. You mean go back to the status quo, what I should have done anyway? That is no penalty at all.

Mr. KAPLAN. If you look at an importer who is about to purchase right now from one of these people who have been found to be dumping and have liquidation suspended right now, he has got to

think twice or three times or four times about whether to buy his semiconductors from the Japanese. The ultimate duty can be fairly high. It is going to be a long time before the entries are ultimately liquidated.

And I think that the fact that people have not abused these laws very regularly over the last 5 years indicates that they do have a strong effect on preventing dumping, preventing unfair trade.

I think the allegation that people are just continuing to dump regardless of these laws is just simply not borne out by the facts. If you look at the various cases that we have seen and the price increases, once a case is brought, we even saw this the minute we self-initiated the 256K DRAM case. The Japanese published statements that they were going to increase prices across the board on dynamic random access memory chips. People do respond to these laws.

Chairman GIBBONS. Did they say they were responding to the laws or the change in the value of the yen and the dollar?

Mr. KAPLAN. I do not know how they portrayed it. But I think both things were a factor.

Chairman GIBBONS. I think if I were an importer and some Japanese came up to me and said here, I can sell you these things real cheap, and if we get caught doing it you are going to post bond and have to pay the regular price, I think I would be tempted to buy his product.

Mr. KAPLAN. The importer has to pay that, not the exporters. And after the final determination it is cash, not a bond, money out of his pocket. So he is sitting there saying if I buy this chip I am going to have to pay money out of my pocket to make this sale. That is a pretty unusual importer who would do that.

Chairman GIBBONS. Go ahead.

Mr. SCHULZE. Thank you, Mr. Chairman.

I would like to shift gears a little bit, gentlemen, and ask Mr. Kaplan: You did refer to nonmarket economies and problems with determining prices. In your opinion, are our laws affecting trade with nonmarket economies adequate at this point?

Mr. KAPLAN. Well, I think we have done a pretty good job of applying the law as it is written. I think we all agree that we need some changes in the law. And it is not currently as effective as it could be.

Mr. SCHULZE. Would you describe for me how the surrogate country fair market value price determination works currently.

Mr. KAPLAN. Basically we get a case, say on paintbrushes from the PRC, People's Republic of China, and we have to find some other paintbrush maker somewhere in the world who will agree to tell us what his home market prices are so that we can use those as a surrogate for the Chinese home market prices. So people on my staff dig out names of paintbrush makers all over the world, places like Sri Lanka and Thailand and India and Colombia and Jamaica, and we send out letters to these people and we say we are conducting a nonmarket economy antidumping case and want you to be asurrogate. In this case, would you give us all your home market prices?

And you can imagine what some poor producer in Jamaica who gets a letter like this thinks. If he understands it at all, he prob-

ably thinks he is being investigated. We try not to convey that impression because he is not. And then when we are lucky we get somebody to cooperate and get their data.

Mr. SCHULZE. So I determine from your statement that surrogate countries are very difficult to find and surrogate producers are not only difficult to find, but are often unwilling to provide the necessary data for you to use?

Mr. KAPLAN. That is correct. And it is becoming more difficult as a result of a judgment we made, correct or not, but in some cases people who have been surrogates were later the subject of antidumping cases themselves. There was no way we could really prevent that. But then the surrogate market really dried up frankly.

Mr. SCHULZE. Is it also difficult to determine whether the products are the same quality and the same material? Do you have to send someone to physically examine the plant? Tell me how that works.

Mr. KAPLAN. We do send people in every antidumping countervailing duty investigation abroad to verify data. And in nonmarket surrogate cases we do sometimes look at the actual merchandise and compare quality and characteristics.

Actually if we get a surrogate producer to cooperate, the comparisons of the merchandise are not the hardest part because we get very detailed descriptions of the paintbrushes or the candles or the steel or whatever it is. So that part we can do.

It is difficult to make those comparisons when we do not have a surrogate and we have to go to Customs data. Then you do not know from the Customs entry data with sufficient specificity what the nature of that product coming in is.

Mr. SCHULZE. As you gentleman know, over the years we have tried to remedy this problem. And the major problem is in determining prices and subsidies as well as fair market value. In a nonmarket ecomomy I think it is virtually impossible for us to follow that trail back and say this is an unreasonable subsidy and this one is not. So I would like your thoughts.

I am now leaning more toward revising section 406 to provide for a method dealing with both fairly and unfairly traded imports and having an injury test. We have to devise it so that we have countervailing and antidumping provisions. It seems to me if we get bogged down again with determining price, either setting a floor or a ceiling, we won't solve the problem. If we set a floor, it is a license to sell the product 1 cent over that floor.

It seems to me the key is injury. And if we make the test injury, it then becomes fair. It would be probably be a little more efficient to operate and probably hopefully a little more beneficial in both domestic producers and overseas suppliers.

Do you have any thoughts on that?

Mr. KAPLAN. I think the amendment of 406 or some 406-like remedy is definitely a possibility, something that I am willing to work with you and your staff on. And I am sure Mr. Holmer is.

There are other options we are also considering which have some pros and cons in comparison to that. I think that it may be difficult to have just an injury type remedy without looking at whether there is fair or unfair trade because of the basic sort of principles

of comparative advantage. But it is something we are certainly willing to work with you on.

Mr. SCHULZE. Well, if we erred, it seems to me we have erred now on protecting your perceived producer. That is the effect. And if we err on the other side, perhaps the next go round we can remedy that, it seems to me that the advantage has been overseas for quite some time, and now let us shift it domestically. And if we are too far off, I am going to adjust it the next time we have a trade bill.

So if you do have any thoughts on it, I would be happy to have it.

Mr. Holmer, do you have any comments you would like to make?

Mr. HOLMER. Nothing other than to echo Mr. Kaplan's desire to work with you and your staff on the proposals.

Mr. SCHULZE. Thank you.

Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Pease.

Mr. PEASE. Thank you, Mr. Chairman.

To go back for just a minute to the problem with nonmarket economies and difficulty in finding a surrogate producer, have we ever considered or would it be possible for you to pay surrogate producers to cooperate?

Mr. KAPLAN. Frankly, I never thought of that. It probably would encourage people. I think there are a lot of problems potentially with paying people to do it. I do not know how much accuracy necessarily you are going to get, and with the other kinds of problems it may raise. But it might have some effect on their willingness to come across with the data.

Mr. PEASE. Sure. Well, I think you might want to give that some serious thought. It has got to be an asset for these surrogate producers to cooperate with you if they have every reason not to and probably not many reasons to cooperate.

And if you would ask a doctor to come in and testify at a hearing, you would probably pay him as an expert witness. And there are lots of other people you pay as expert witnesses. It seems to me that payment to a surrogate producer would be analogous.

You need the information, and that person has the information, you are paying that person for his services, not to come down on your side but to reimburse that person for his expenses.

Let me ask this question about the cost to industry people in filing countervailing duty or antidumping cases. We have heard a lot of complaints in the section 301, that it is almost prohibitively expensive for a small company to file 301 case just in terms of legal fees. What is the situation with countervailing duty and antidumping cases?

Mr. KAPLAN. Well, you certainly have a lot of cases from small businesses, ranging from raspberry growers in Oregon to fishermen in New England to small steel companies, not the major producers, but people making specialty products, to paintbrushes. So I think through the use of coalitions and other devices, the law is accessible to small business.

Mr. PEASE. Do you have any idea of what the range of cost is in legal fees for pursuing a typical countervailing duty or dumping case?

Mr. KAPLAN. I have heard a lot of numbers thrown around. I think you might get more accurate data speaking to members of the private bar who are testifying on other panels. I do not know with any degree of precision what the number is.

Mr. PEASE. And companies complain to you specifically about the cost of filing these cases?

Mr. KAPLAN. I meet with a lot of companies, a lot of small businesses, and I think most of those people are pretty savvy and pretty sophisticated. I think they see it as a cost benefit analysis. It is like any other cost of doing business.

I mean, say the number is $100,000 or $200,000. If you have significant competition from abroad that is taking away your market share, that may not be very much money if you look at an antidumping order on the book for 5 or 10 years thereafter. So most of the people I have met with are good enough businessmen to see that as being a rational calculation.

Mr. PEASE. Well, I guess that is what concerns me. If it is a rational calculation, if it is a small company which is being hurt pretty badly, their rational calculation may be that they cannot afford to pursue a case of this sort and therefore their best course of action is just to go out of business.

Mr. KAPLAN. Well, I think that may certainly happen on some occasions. But I think that we have certainly encouraged people to bring cases with their own in-house lawyers or without lawyers at all. And we have had a fair number of cases before the Department of Commerce which have not required attorneys and in which they have not had attorneys.

Now, I want to be perfectly honest. I think the injury side is much harder to put together without a lawyer. But we in Import Administration do all the investigation. All you have to do is follow our regulations, file a petition, give us a reasonable indication there is dumping or subsidization, and we will go forward with the whole case. And we have been charged, people say, you have got to have a hearing, you have got to do this, you have got to do that, and we need a lawyer. Really domestic companies do not need a lawyer before the Department of Commerce.

Mr. PEASE. Well, that is encouraging. What would happen, what does happen, if a small company comes to a Member of Congress and says we think we are subject to the dumping action from another company, we would like to do something about it, we are really babes in the woods, we do not have a Washington lawyer, we do not have much of anything, we are essentially an 100 employee company or whatever? And if we referred them to the Department of Commerce, what kind of help can we expect that company will get from you?

Mr. KAPLAN. In my prior job, I was Director of the Office of Investigations which actually does the investigations. I must have answered 20 letters a month and met with 4 or 5 businesses in just the position you mention; sitting down with them for an hour or two, going over the regulations, going over what they should do if they wanted to file the case.

And in 1 in 10, 1 in 20, we actually did get a case. We are at their disposal, we see that as part of our job.

Mr. PEASE. That is a service you are still providing?

Mr. KAPLAN. Yes.

Mr. PEASE. Can you tell me what effect if any the initial Gramm-Rudman budget cuts of March 1 have had on your operation?

Mr. KAPLAN. In the 1987 fiscal budget, OMB has approved 55 new slots for Import Administration. We are being taken care of. We need those people, and we are scheduled to get them.

Mr. PEASE. Have you suffered any reduction in your staff in the last couple of months as a result of the Gramm-Rudman cut?

Mr. KAPLAN. No.

Mr. PEASE. Last, going back to, Mr. Chairman, I think the frustration that the chairman has addressed before, in a lot of the laws of this country, we have escalating penalties. You drink and drive once, 3 days in jail; twice, 10 days in jail; and 30 days after that. And the object of these penalties is not only punishing somebody for doing something, but to discourage them from doing it in the future.

And I think the frustration that the chairman is trying to get at is foreign companies can make this cost benefit calculation you mentioned earlier and decide, well, it is worthwhile taking a chance, we will dump, we will get caught, it will cost us a certain amount, and we will pay it. And then 2 weeks later we will make another calculation and either decide to dump or not to dump.

Is there anything in the current law which tries to put a dumper on notice that future violations will be more costly than the first or second violation?

Mr. KAPLAN. Well, within the same product you cannot dump again. You are monitored for the foreseeable future. And if you try to pay back the importer for the dumping margin, we also catch that as an additional amount of dumping. In terms of other products, no, there really is not.

Mr. PEASE. Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Frenzel.

Mr. FRENZEL. Thank you, Mr. Chairman.

Gentlemen, thank you for your testimony. Mr. Schulze and I have been sitting here talking about nonmarket economies. And in your statement you indicate that you want to work with us. But your only suggestion is that this is not a good way to handle the job.

Do you have any ideas on how we might work together to solve this problem?

Mr. KAPLAN. We do not have at this point a solidified administration proposal. But we are looking at three or four things. I think some of the ideas we have been looking at are related to lowest average import price or average import price, something geared to U.S. price, somehow looking at the U.S. price and making an adjustment related to the different competitive factors in nonmarket economies, an injury type remedy, which Mr. Schulze mentioned, sort of something along the lines of 406, and finally, something related to cost of production, a factors type approach which we use on occasion now.

Mr. FRENZEL. I think cost of production is of course the very best when you can find it. But I suggest, in the nonmarket economies, managers do not know what their costs are. And I really do not know how we are going to establish them.

I remember once visiting the famous assembly line which makes golf carts in Poland and there is no accountant in the world who can tell you what the cost is. I suspect our problems in the future are going to come from the People's Republic perhaps more than from Eastern Europe or the U.S.S.R. And we are trying to maintain a responsible relationship across the board including trading with that country.

It would be a good idea if they and we knew what we are going to do in the future in the case of these kinds of allegations. I think the last case you had with them, the surrogate you used was Uruguay?

Mr. KAPLAN. I think it was Malaysia and Guinea.

Mr. FRENZEL. I think that is a little better than Uruguay. But if we are going to pass a trade bill, I think this is one of the things that ought to be taken care of.

Mr. Schulze has over the years fired off a variety of suggestions, and I think it is about time for the administration to begin responding and coming back with some of the ideas rather than just saying the present system does not work and we do not like the suggestions.

This bill is apparently going to be moved out of here pretty soon, and I think that is one of the things that probably ought to be in it when it moves. We will be relying on you two gentlemen to carry the load on that. And I think the whole committee is interested in it. I think we ought to button this thing up so everybody knows what to expect on these kind of cases in the future.

Statistics indicate that the number of cases is growing in geometric proportion; is that correct?

Mr. KAPLAN. Overall, yes, I think it is.

Mr. FRENZEL. How many cases did you have last year in AD and CVD?

Mr. KAPLAN. I think it was 147, up from 50 in 1980. And they have gone up very regularly, yes.

Mr. FRENZEL. Can you tell us how many nonmarket economy cases you had in your last year?

Mr. KAPLAN. I am sorry, I would have to check that.

Mr. FRENZEL. Were there some?

Mr. KAPLAN. There were a lot, because we had a lot of filings on steel which ultimately led to the VRA's with Poland and Czechoslovakia and a variety of other countries. There were numerous filings on steel from nonmarket economies.

Mr. FRENZEL. You solved that problem by handling it a different way?

Mr. KAPLAN. That is right.

Mr. FRENZEL. In response the petitioners withdrew their claims?

Mr. KAPLAN. That is correct, yes.

Mr. FRENZEL. Of course, for the long term we may not be so lucky.

Mr. Chairman, I yield the balance of my time.

Chairman GIBBONS. Mr. Crane.

Mr. CRANE. Thank you, Mr. Chairman.

Could you gentlemen help me on this dumping question. When a dumping charge is filed by an American company and you begin

the investigation, do you start imposing duties on that product at some stipulated time after the charge has been filed?

Mr. KAPLAN. We start at the preliminary determination, which is generally 160 days after the filing of the case if there is an affirmative preliminary determination.

Mr. CRANE. And then how much time is there between that preliminary finding and say an affirmative determination on average?

Mr. KAPLAN. Generally 75 days to the final. There are also provisions in the act for assessing retroactively in some instances. It is called critical circumstances, where you can go 90 days back before the preliminary determination.

Mr. CRANE. Now, after the affirmative finding, presumably these duties you are holding in an escrow account?

Mr. KAPLAN. Yes.

Mr. CRANE. After that affirmative finding, what is the next step procedurally?

Mr. KAPLAN. Well, there has to be an injury finding, a final injury finding. And then any good that comes in, there has to be a cash deposit paid for that good coming in.

Mr. CRANE. Now, what if that dumper at some point along the way, stops dumping, and he agrees, yes, we were probably selling them below our cost because we are trying to dump all this excess inventory, and he reforms his ways along the way? What happens?

Mr. KAPLAN. He has to pay the amount of duty that we found at the original determination until we complete the annual review. And then if we find his prices have gone up and he is not dumping, he will get that money back.

Mr. CRANE. With interest; right?

Mr. KAPLAN. With interest, right.

Mr. CRANE. Is that any disincentive to dump?

Mr. KAPLAN. If he has to pay it if he does not reform.

Mr. CRANE. My point is if I were a foreign competitor, I would come in and dump, and I would dump, dump, getting a good interest return on all of the money I am depositing with you folks anyway, and then I would get religion just before the end of the period to qualify as no longer a dumper. In the short run I am suggesting I do not see any penalty for dumping. I can see some real positive reasons to dump everything I could in the U.S. markets.

Mr. KAPLAN. Every sale that he dumped, dumped, dumped he has got to pay the duty. He will never get that back. If there are 100 sales in the year and he dumps on 90 on them, and right before we do the review he fixes his dumping, he will not have to pay for those last 10 sales. But for the other 90 he has got to pay.

Mr. CRANE. But as far as any penalty, what he is paying is simply bringing his product up to the fair market value; is it not? Are those duties not set essentially on those basis?

Mr. KAPLAN. Yes. But he does not get that money.

Mr. CRANE. But my point is until he gets caught, unless you apply it retroactively, until he gets caught, one, he may have gotten away with pushing somebody else out of the market; and two, when he is caught all he is forced to pay is what, in effect, is the real price of the commodity in the market. And any penalty assessments are refunded with interest.

It just seems to me that there is no logic in this. You are penalizing somebody for doing something crooked. Why, just because he subsequently gets religion, why refund that money at all? Why not say that is what you pay for having been found guilty of violating the law?

Mr. KAPLAN. Well, I think there is a lot of feeling around that these laws are not effective. But I think that if you look at the number of cases filed, talk to the importers who are actually impacted by these duties, talk to the customers who will do almost anything to get out from under an antidumping duty order, agree to any kind of quantitative constraint, do anything to get the Commerce Department off their back, I just do not think it washes.

I think there is a very strong disincentive for dumping. And I think you are going to see industries with worldwide overcapacity where there are going to be problems with whatever remedies we have to put into place. That is the case with steel. That is why we have had to do something exceptional. I think with the usual products we do not have that situation, and the antidumping laws end dumping.

Mr. CRANE. One of my concerns, given the timeframe you enumerated for me, which is about 6½ months for semiconductors..

Mr. KAPLAN. Yes.

Mr. CRANE. The generational turnover in semiconductors is so rapid that by the time you finally reach a determination that this fellow dumped, in the normal evolution of things, the industry may already be into a new generation of semiconductors. Is it a fixed timeframe to ascertain dumping regardless of what the commodity may be? Is it stipulated 120 days and then the 75 days?

Mr. KAPLAN. It is a maximum. In the 256K DRAM self-initiation, we made the preliminary determination 75 days early. So in instances like this one where we are talking about generational problems, we can go faster.

Mr. HOLMER. In the 301 investigation on semiconductors, where we were working cooperatively with Mr. Kaplan and his staff, we are attempting to come up with an overall solution with the Japanese that would allow for a substantially expedited process for dealing with new semiconductor investigations.

Mr. CRANE. I still think that some greater penalties in the dumping category are called for. I had originally thought of the possibility of denying market access. But then someone, one of the witnesses, pointed out that we need some of these products for national defense reasons and that denying market access would not be the solution.

One dumping case, one instance is bad enough, but if you find a case of an individual or dumper rather that is a repeat offender, I think the penalties, fines, for doing that should be strengthened. So I would welcome any input you have as to how to make the law tough enough that there are significant, I mean really significant, disincentives for people ever dumping again.

I thank you for your testimony.

Mr. KAPLAN. Thank you, sir.

Chairman GIBBONS. Could we save time by shortening the time from the 120 days? Do you have anything where you compare home market prices with U.S. prices?

Mr. KAPLAN. I am sorry?

Chairman GIBBONS. Do you have any dumping cases where you are comparing U.S. prices with home market prices.

Mr. KAPLAN. I would say 50 percent.

Chairman GIBBONS. It does not take long to compare those prices; does it?

Mr. KAPLAN. I think it depends on the complexity of the case. We had a case on Brazilian steel where we had 20,000 transactions. And it is not a fast process when you have that many sales. We have tried to go faster when we can. But we have learned over time that speed can often lead to inaccuracy. And we are not confident about doing it much faster than we do.

Chairman GIBBONS. Well, I realize that you always try to pick on the worst examples when I ask you a question in giving an answer. And I, Sam Gibbons, just want you to know I had conferences with the U.S. Senators and I know what they did to you all last week. I want to tell you there is a fire storm out there brewing, and you still have not gotten the message when the Senators threatened to hit you with the Canadian negotiations because they do not know what to do.

Mr. Frenzel has pointed out we have had this problem with nonmarket economies around here for generations. And frankly we must depend upon you all to make suggestions. And we do not get a thing from you except excuses.

If you are not going to move, you better get out of the way. Because we are going to move. And next Monday we are going to start moving. And you better have some suggestions up here, concrete suggestions about what to do about this and about how to speed up all of these processes, or you are going to get run over.

Mr. KAPLAN. Well, sir, I would say in terms of speeding them up that if we do try to move them a lot faster, I think that may hurt the effectiveness of the law in the long run.

Chairman GIBBONS. Well, I have heard that and I do not believe it. Thank you.

Mr. KAPLAN. Thank you, sir.

Chairman GIBBONS. Our next witnesses are C. Fred Bergsten and Mr. Litan.

To both of those gentlemen, we want to say we appreciate what you have done to help us in our discussions up to this time. And we are happy to work with you.

Mr. Bergsten, come right ahead. You are first.

STATEMENT OF C. FRED BERGSTEN, DIRECTOR, INSTITUTE FOR INTERNATIONAL ECONOMICS

Mr. BERGSTEN. Thank you very much, Mr. Chairman.

What I want to do today is put a simple proposal before the committee. It is a proposal that relates to the way in which the United States implements import relief. It therefore relates directly to your consideration of section 201 of the Trade Act and any changes that you contemplate making in that, many of which are outlined in the discussion draft that you have circulated.

For purposes of this discussion, I am not raising the issue of when the United States should use import controls or even wheth-

er we should apply quantitative controls as opposed to tariffs and other devices. I am suggesting that the United States in the past has made a major mistake in the technique through which we implement quantitative import control, and I am also suggesting that the committee has a great opportunity to rectify this error in the bill before you.

To put it very simply, in most cases when the United States now applies new import relief we do it through quantitative controls, and we give the quotas away. We sometimes give them to domestic importers. More frequently we give them away to foreign exporters. That is the case in textiles and apparel, it is the case in steel, it is the case in automobiles, all the big cases that now enjoy import relief.

And when we give the quotas away to the foreign countries, they in turn divide up those quotas among their individual suppliers, giving some of the quotas to actual exporters, and giving some to people who used to export but have not exported for a long time. There are stories that I think are not apocryphal but real, where many of the export quotas that the United States gives away wind up in the hands of people who have not produced a shirt or pair of pants for 20 years.

What they do is sit in hotel rooms in the Far East with their export quota tickets that they have been given and sell them for a higher price to someone who is using the product and wants to use an export ticket. What this method means is that the foreign exporters or foreign ticket brokers are the ones who essentially set the price of the product and seize what economists call the scarcity rent generated by the imported controls.

We all know when any quantitative restriction is put on the market, that the price of the goods coming in under that quantitative restriction is inflated, and somebody then gets the higher price and is benefitting from the quota. And what I am suggesting is that in most cases, under the way we now implement import controls here, those scarcity rents are given away to foreign interests.

The amounts of money involved are huge. We have recently published a study in which we have tried to estimate what those scarcity rents look like. It is an analytical process that is fraught with uncertainty. One has to make assumptions and do lots of different analytical steps.

But we have concluded, I think conservatively in fact, that the United States is now giving away something like $8 billion in quota rents to foreign suppliers in the 17 industries where we now have quantitative controls on import flows.

Chairman GIBBONS. Is that an annual figure?

Mr. BERGSTEN. Yes. Something like $8 billion per year is captured by foreign interests through their ability to garner the scarcity rents generated by the fact that we give away the rights to sell into our restricted markets.

So what I suggest to the committee is that in the future, instead of giving these quotas away and giving away this $8 billion or so, that the U.S. Government should sell the quotas by auctioning them off to all comers, be they importers, retailers, foreign exporters, whoever wants to bid. Then, without arguing for the moment

whether the quantitative measure should be changed, the U.S. Government would then capture those scarcity rents.

Then we could devote the proceeds from the auction quota to support meaningful adjustment of the firms and workers in the industries that are being protected, in essence taking the higher prices paid by the consumers through the import controls and channeling them back to the firms and workers who need help to adjust to the import penetration itself. We would then have an effective financing mechanism to promote adjustment for those Americans adversely affected by the import penetration and who need that help.

I am delighted that the kinds of proposals I am suggesting are in fact included in the discussion draft that you, Mr. Chairman, have circulated. The notion is there that any future quantitative controls should be implemented through public auction.

You in addition create a supplemental trade adjustment assistance trust fund which would receive the revenues from those auctions, or from new tariffs that were applied in case tariffs were used, and the funding from that supplemental adjustment assistance trust fund could then be used to support meaningful help for the workers and firms who were adversely affected by the import competition.

It seems to me you have got here an enormously creative and desirable scheme, and I would strongly hope that it will be included in your final legislation.

As I have observed the debate on this topic, three sets of objections have been raised to the notion and I would like to briefly respond to those objections. When Ambassador Yeutter testified before you a few days ago, he argued that the auction quota scheme would be a bureaucratic nightmare which would be inconsistent with our GATT obligations. My somewhat sarcastic response would be to say it is always the refuge of scoundrels to say that something would be a bureaucratic nightmare when they cannot come up with a substantive objection to it.

In fact, Australia carries out its import quotas this way and New Zealand does it. They have had no problems with their GATT obligations. They would not say it is the easiest or least complex system in the world. But it is certainly workable, it is not a bureaucratic nightmare. I have not seen any evidence to that end.

The U.S. Treasury carries out auctions every week for U.S. securities. Those are not a bureaucratic nightmare, indeed there is a small group that carries them out. I think the auction technique can be done in a reasonably efficient way on a relatively low budget. Even if it cost a little money to do it, Mr. Chairman, we are talking about capturing billions of dollars of rents for the U.S. Government and the U.S. budget. So a modest expenditure of personnel to carry it out would be well spent in any kind of cost benefit and budgetary terms.

Ambassador Yeutter also argued that, with an auction quota scheme it would be impossible to carry out import relief through so-called orderly market arrangements. I do not happen to be a fan of orderly marketing arrangements, but I think he is wrong on the facts. You could still negotiate orderly marketing arrangements, allocating to each foreign country what the volume of its exports

could be. Then you would auction off that volume of exports to, again, whatever bidders want to come in and buy them.

You would then be auctioning on a country-by-country basis, not a global basis. But you could carry out the program and still capture the revenue. So the technique is consistent with orderly marketing arrangements, and I do not see the objection on that count—although I would not want to be viewed as an advocate of OMA's as import relief.

A second and more serious objection to the auction quota idea has been the notion that, if we generated a lot of revenue for the U.S. Government and particularly if we devoted it to worthy purposes for trade adjustment, somehow we would get hooked on the revenue and then we would never get off the quotas because we would be so use to the revenue. I am very dubious of that proposition, Mr. Chairman. First of all, we have had through the history of the Republic tariffs which have generated far larger amounts of revenue than would be generated under the quota auctions that I am talking about. That has not stopped us from steadily reducing those tariff levels over the years, from 40 percent in the 1930's to 5 percent now.

When I have been involved in the process, nobody even mentioned the revenue effects. I do not think they were very seriously considered. So I am dubious that revenue considerations on even an amount of $6 to $8 billion, on a total budget of $1 trillion, would be decisive.

Perhaps even more persuasive is that we seem to be hooked on quotas when we do not get the revenues. We have had our textile quotas for about 30 years. We have had steel quotas off and on for about 20 years. So in some sense we seem to have gotten hooked even without any revenue.

Mr. Chairman, I would suggest that the duration of these import relief measures really is determined much more by the characteristics of the industry and U.S. policy toward the industry than whether or not we get revenue from them.

Indeed, to the extent that we generated revenue from the import relief for the industries in the way I am suggesting, and then use that revenue to help adjust workers and firms in the industry, either to compete more effectively or move from the industry to others, it seems to me we would reduce the prospect that the import relief would go on indefinitely into the future because we would have a more constructive approach and reduce the need to perpetuate the import controls forever.

The final objection that has been raised is that the other countries would not accept it. There is a serious consideration that the other countries, as I indicated, now do get these scarcity rents, in the billions of dollars. That in some sense is compensation to them for accepting a limitation on the volume of their sales into our market.

Again, I would suggest that the dynamics of the process would obviate that concern. If we began to capture the revenues and devoted those to adjustment of the firms and workers in the industry, we would make much more likely the prospect of phasing down the relief for that sector over time. Therefore, the other countries, if they are competitive, should see an opportunity to expand the

volume of their sales over time, which would be of much greater benefit to them than capturing the scarcity rents in the short run.

So the proposal obviously raises significant issues, as wherever billions of dollars are involved that is going to be the case. It seems to me the committee and the Congress really do have a major opportunity here to change the technique by which we now implement import relief, seize the scarcity rents for the United States itself, devote those moneys which are in the billions of dollars to constructive positive adjustment, and help the firms and workers who are now adversely affected by the import flows, and therefore contribute importantly to a much more sensible, much more temporary system of import relief under section 201 and under U.S. trade law.

Thank you very much.

[The prepared statement follows:]

REFORMING THE ESCAPE CLAUSE: SELF-FINANCING ADJUSTMENT FOR AMERICAN FIRMS AND WORKERS

Statement by

C. Fred Bergsten, Director*

Institute for International Economics

before the

House Ways and Means Committee

Subcommittee on International Trade

April 15, 1986

The Issue

Adjustment to the economic dislocation caused for US firms and workers by shifts in the composition of international trade is the central long-term problem of US trade policy.[1] "Protectionist" pressures are in essence proposals to avoid or delay adjustment to increased import competition.

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*Formerly Assistant Secretary of the Treasury for International Affairs. This testimony draws heavily on three studies released recently by the Institute for International Economics: Trading for Growth: The Next Round of Trade Negotiations (September 1985, by Gary Clyde Hufbauer and Jeffrey J. Schott); Trade Policy for Troubled Industries (March 1986, by Hufbauer and Howard F. Rosen) and Trade Protection in the United States: 31 Case Studies (March 1986, by Hufbauer, Diane T. Berliner and Kimberly Ann Elliott). Details underlying many of the statements made in this testimony can be found in the three studies.

1. At present, the United States also faces a huge deficit in its trade balance. This is primarily due to the continuing overvaluation of the exchange rate of the dollar, which in turn relates to macroeconomic issues such as our own budget deficit and tight fiscal policies (and structural economic conditions) in major countries abroad. There is relatively little that trade policy can do about the trade deficit. However, the overvalued dollar substantially increases the breadth and severity of the adjustment problems faced by American industry.

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US trade policy must have an effective mechanism to deal with these pressures. That mechanism should induce American industries to adjust to changes in world trade, over time and with government help when needed, rather than try to evade those changes. Indeed, the creation of stronger incentives for constructive adjustment should be the central focus of any reform of US trade law. In doing so, the most promising course is to build on the traditional "escape clause" (section 201).

Adjustment as a Central Focus of US Trade Policy

From the early 1960s through 1980, there was widespread bipartisan agreement in the United States that government had an obligation to help the relatively few firms and workers adversely affected by imports to help assure that the country as a whole could enjoy the benefits of an essentially liberal trade policy. Hence the program of Trade Adjustment Assistance (TAA) was created by President Kennedy in 1962, implemented for the first time under President Nixon (1969-70), substantially liberalized under President Ford (in the Trade Act of 1974) and used most extensively by President Carter (during the 1980 recession).

These presidents all believed that a policy of adjustment made sense on its merits, in helping firms and workers adjust to hardship caused by trade dislocation, and served as an essential component of a liberal trade policy. TAA was used by all these presidents as an alternative to higher import barriers or as a supplement to such controls. TAA appears to have helped build

support for trade liberalization and limit the need for import relief, and thus promoted the national economic welfare as well as the interests of the individual firms and workers assisted.

During the past five years, however, TAA has been virtually relegated to the junk heap for three reasons. The first was an argument of general principle: that nearly all special entitlement programs should be scrapped, and that there is in particular no basis for helping trade-impacted firms and workers more than firms and workers adversely affected by other sources of economic change. Second, serious doubts were raised over the effectiveness of TAA in achieving real adjustment. Third was the need to cut government expenditures wherever possible for overall budgetary reasons--which hit especially hard against any program which, like TAA, has no strong support from domestic interest groups, vested bureaucratic interests or the Administration.[2]

Import Relief To Promote Adjustment

Our proposed reform of the escape clause would deal with all three of these issues, particularly the last of them, by introducing a new program of self-financed adjustment. The program would enable the United States Government to generate the revenues needed to finance adjustment for a specific industry by mobilizing funds from the import protection accorded to that same

2. It was ironic that, when President Reagan asked the Secretary of Labor to design an adjustment program for shoe workers as an alternative to new import barriers last year, the lack of resources under the Job Training Partnership Act seemed to preclude any significant response.

industry. This new program would do so by building on the imaginative proposals included in the "discussion draft" bill of March 21 tabled by the Chairman, and extending the concepts included there in several important ways.

Most forms of protection currently employed by the United States, such as "voluntary" export restraints (including "orderly marketing agreements") and allocated quotas, generate scarcity rents which run into billions of dollars because they artificially limit the supply of the product being protected. These rents are now captured wholly or primarily by the foreign exporters, because the US Government gives the quotas away. Current exporters, or previous exporters who now produce nothing but still receive quota allocations and simply sell them to others, thereby reap the windfall profits. Our proposal would recoup these revenues for the US Treasury by replacing the allocated quotas with auctioned quotas (or tariffs), and use the funds to help workers and firms in the same industries to adjust to the import competition.

In the first instance, our proposal could be implemented without either (a) altering the level of import relief granted to an American industry or (b) altering the form, i.e., quotas, through which that relief is granted. Decisions on these two central elements of import relief could proceed as at present, or as amended by any new legislation. The difference would be in the mechanism through which the quotas were administered: via auction rather than allocation. This would enable the United States to harness the revenues generated by the import controls

rather than giving them away to producers in Korea or quota brokers in Hong Kong.

The revenues so obtained should then be earmarked to promote constructive adjustment of the industry granted temporary relief. The objective of such adjustment should be clear, however. Our recent study of protection extended to American industries in the postwar period reveals that there are virtually no "phoenix cases" in which an industry was able to regain its prior size without (or even with) permanent government protection.[3] The main objective must therefore be a humane and efficient downsizing of the impacted industry. The reform of section 201 proposed in the "discussion draft" is therefore quite correct to emphasize "facilitating the orderly transfer of resources to alternative uses" [section 201(a)(1)].

To promote this purpose,the revenues obtained from the import relief would be utilized for greatly expanded training and relocation programs for workers employed in the troubled industry on the "inventory date" (when temporary protection began), along with early retirement at perhaps 70 percent of the previous wage for five years. Firms that downsize to an internationally competitive level could be helped by government purchase at face value of their tax-loss carryforwards or by other types of support such as grants for research and development to develop new, internationally competitive products or processes.

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3. The only exception was bicycles. Our study of similar adjustment efforts in four other industrial countries revealed only one other possible case--aircraft in Germany.

This reform could be introduced in four phases. The first phase could simply require all US import relief actions to be administered through tariffs or auctioned quotas, leaving open for the moment whether the revenues would be directed towards adjustment purposes or with the residual channelled into general revenues (and thereby reducing the budget deficit by an equal amount). This would at least capture for the United States the scarcity rents now being given away to other countries. Section 213(2)(C) of the "discussion draft" achieves this purpose by requiring that any quantitative restraints applied under Section 201 be allocated "by public auction," and should be incorporated in the final legislation.

A second phase would be to earmark for adjustment purposes some or all of the revenues derived from retaining the rents in the United States. This could be done either through (a) creating a general pool of trade-generated revenue which could be used for adjustment in all trade-impacted industries or (b) earmarking revenue generated by protection from a specific industry for adjustment by that industry. The "discussion draft" makes an important start in that direction [a la alternative (b)] by creating a Supplemental Adjustment Assistance Trust Fund (SAATF) into which would be placed all revenues generated by tariffs, tariff-rate quotas or auctioned quotas. This too should be viewed as an integral component of the new legislation, which should be crafted to assure that SAATF funds could be used for trade adjustment purposes without further Congressional action.

The third phase would call for the development of a long-term adjustment plan for each protected industry under which its import relief would phase down (and eventually out) over time as adjustment was achieved. Such plans are called for in section 203 of the draft bill, and the Supplemental Adjustment Assistance Trust Fund would provide a source of self-financing to implement these plans.

The greatly expanded adjustment program which would result from this scheme would make credible, and even politically attractive, the reduction and eventual elimination of special protection. It would capture the revenues already being extracted from American users of the imports, via trade barriers, and channel them to American workers and firms adversely affected by those same imports rather than give them away to foreign exporters and others. Constructive adjustment could thus become a political and economic reality.

Once this was achieved, a final step could be the conversion of some or all of the existing quantitative controls, whether allocated directly by the United States itself (as with sugar and dairy products) or by foreign exporting countries after negotiations with the United States (as with apparel and steel), to auctioned quotas or tariffs. Such a conversion of existing quotas, in the textile/apparel and steel industries alone would shift almost $4 billion in revenues to the United States. Conversion in all industries now receiving sizable quantitative protection would garner over $8 billion. The self-financing approach might thus also provide a realistic way to deal with

long-standing, seeming intractable adjustment problems for a few key American industries.

Issues Concerning Auctioned Quotas

Perhaps the most novel element in this approach is the reliance it would place on auctioned quotas as an alternative to allocated quotas. This has two basic purposes: to implement import relief in a way which would capture the scarcity rents for the United States rather than give them away to other countries, and to let the market set the price of those rents in the most efficient manner. (The current "market" which sets these rents is well established in some cases, as for apparel in Hong Kong and Taiwan, but very undeveloped in many others.)

Tariffs are still better for both purposes, but run into three practical problems. First, domestic industries which seek protection strongly prefer the certainty of import levels assured by quotas to the uncertainty which is inherent under tariffs. However, these industries should be indifferent to the mechanism by which the quota is administered since the import level would be the same under either. Indeed, they should prefer the auction approach if the revenues obtained were used to support their own adjustment efforts.

Second, "tariffying" existing quotas would technically violate US bindings under the GATT. There is a standard procedure (under Article XXVIII) for renegotiating tariffs, however, and the absence of any increase in the effective level

of protection should obviate this problem. Indeed, exporting countries should welcome the shift because of the increased transparency of the import relief and support provided for domestic adjustment--both of which should enhance the likelihood of future reduction or elimination of the relief.

Third, under GATT rules (and the basic most-favored-nation principle of US trade law), tariffs must be applied on a non-discriminatory basis to all suppliers. Many suppliers are exempted under existing quota systems, by contrast, particularly those administered through negotiated VRAs. Hence a conversion of existing quantitative restraints to tariffs could widen the country coverage of restraints substantially, e.g., to Europe and Canada in the case of textiles and apparel. For new cases, tariffs could be used where all suppliers were to be covered but auctioned quotas would still permit the (dubious) practice of singling out only the most competitive countries.

Hence auctioned quotas are a compromise step toward achieving the basic objectives cited above, but avoid several potentially troublesome practical problems. Some in fact view auctioned quotas as a transitional step from allocated quotas to tariffs, for existing relief programs, with their chief purpose being to determine through the market the level at which the tariff should subsequently be set[4].

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4. Robert Z. Lawrence and Robert E. Litan, "Living with the Trade Deficit: Adjustment Strategies to Preserve Free Trade," The Brookings Review, IV, No. 1, Fall 1985.

There is another practical problem which could generate resistance to a shift of existing restraints from allocated to auctioned quotas: the adverse impact on exporting countries which are relatively uncompetitive and thus might lose sales if the quotas were auctioned for purchases from all covered suppliers together ("global auctioning"). However, there is another transitional devise which could alleviate this difficulty: a gradual phasein of the globally auctioned quotas with an equally gradual phasedown of the nationally allocated (or nationally auctioned) quotas.

There would seem to be no major technical problems with auctioning of quotas. Such systems are now used extensively in Australia and New Zealand as part of overall industry adjustment plans; Ambassador Yeutter's stated fears about the GATTability or "bureaucratic nightmare" surrounding them thus seem far-fetched. Eligibility for bidding could either be limited to US citizens, including agents of foreign suppliers as well as importers and retailers, or opened to all comers (foreign as well as domestic). There would be no risk of price collusion among the bidders or shutting out small bidders; Treasury conducts securities auctions every week which deal effectively with such concerns. Technically, there could be a single auction for all covered imports or a country-by-country auction on the basis of national allocations; this would permit the continuation of "orderly marketing agreements" without giving up the advantages to the United States of auctioning the quotas to obtain the scarcity rents [as per Section 213(2)(C) of the "discussion draft"].

A political issue is how exporting countries would react to any US move to capture the rents via auctioned quotas (or tariffs). This issue could be particularly acute where conversion of current restraints was envisaged, and where those restraints are now implemented by exporters through VRAs or OMAs. Giving the rent to the foreigners is a de facto method of providing compensation for their acceptance of limits on the volume of their sales[5], which also (because of the inadequacies of Article XIX of the GATT) avoids the need to seek GATT approval and thus formal compensation requirements or retaliation risks.

The response to these foreign concerns would be threefold. First, a shift to allocated quotas--even with nothing beyond the first phase described above--would increase substantially the visibility of the cost of import relief to the American public and thus tend to build pressure for its subsequent liberalization. Other countries could thus expect, over time, to experience increased sales volume which would compensate for their losses of the scarcity rents.

Second, adoption of the second phase--with revenue from the quota auctions devoted to domestic adjustment--would substantially enhance the credibility of that prospect by providing an important supplement to import relief and thereby reducing the need for it over time. Going on to the third phase--an explicit

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5. As first noted and analyzed by C. Fred Bergsten, "On the Non-Equivalence of Import Quotas and Voluntary Export Restraints," in C. Fred Bergsten, editor, Toward A New World Trade Policy (Lexington, Massachusetts: D.C. Heath and Co., 1975), especially pp. 245-252.

phasedown of the protection itself as adjustment occurred--would of course give full assurance to all competitive exporters that they would have the opportunity to grow from the process.

Uncompetitive foreign suppliers could be expected to reject all these considerations. Some of them in fact maintain their market shares only because of the allocation of quotas by country, and their ability to seize corresponding scarcity rents gives them an added bonus. They would tend to lose out even under Phase 1, to the extent that the quotas were auctioned on a "global" (all covered suppliers) basis, and would not be very confident of their ability to recoup via volume expansion even under Phases 2 and 3. As a result, as noted already, the United States might want to phase in the global auctioning and retain some country quotas (auctioned or allocated) on a temporary basis. But we should not take very seriously, as a long run proposition, the complaint of exporters whose basic positions are sustained only by a quota system itself.

A concern expressed domestically about using quotas, including auctioned quotas, runs in almost the opposite direction: that seizure of the scarcity rents would become so attractive to a US Government in search of added revenues for budgetary purposes, and especially to groups which benefitted directly from those revenues such as trade-impacted firms and workers, that we would become "hooked" on the quotas and never be able to eliminate them. The straightforward answer is that tariffs have always provided a larger source of revenue than auctioned quotas could ever be expected to provide in the future,

yet revenue concerns have never deterred the United States from steadily reducing them in a series of reciprocal negotiations throughout the postwar period. The issue of direct beneficiaries could be handled most effectively by adopting Phases 2 and 3 at the outset; this would both reduce the level of the need for assistance in the future (by promoting the rationalization of the protected industry) and make clear from the outset that such help would be phased down over time.

It should also be noted that many current US quantitative restrictions have been in place for many years, some since before World War II. The textile/apparel restraints have existed for almost thirty years, and steel has been on and off for almost twenty years. The degree to which we have become "hooked" seems to depend more on the nature of the industry than the type of relief granted, and perhaps the creation of a self-financed adjustment program would offer the best prospect for getting off that particular hook.

Closing the Injury Test "Gap"

The structure of US trade policy currently enables industries which do not qualify for import relief under section 201 to seek relief under a series of alternative routes. They can employ the statutes governing unfair trade practices, seek direct Administrative negotiation of VRAs, or pursue legislative responses through the Congress. One reason for the marked increased in the use of these alternative routes in recent years is the "gap" in eligibility requirements among them.

Under the existing relief system of section 201, industries must be able to prove that imports are a substantial cause of actual or threatened serious injury. To receive help under the unfair trade provisions, they need to prove only that imports were a cause of actual or threatened material injury. Industries need pass no causation test in order to be granted legislated or administration-negotiated protection; they must "only" be able to muster political support for their case.

The objective of the injury test should be to encourage needy industries to obtain relief, not to promote a shopping spree for protection. US trade policy should encourage the use of section 201 because it is transparent and temporary, while other avenues of relief are much more discretionary and usually more distortionary (by their even heavier reliance on quotas and VRAs). Once section 201 is amended to assure a strong emphasis on adjustment, as discussed above, its injury test should therefore be liberalized to make the section a more attractive alternative to other forms of relief. This could be done by requiring only that "imports contributed importantly to serious injury," the exisiting test under the TAA program.

Expanding Relief Options

Under a plan put forth in Trade Policy for Troubled Industries, the International Trade Commission and the United States Trade Representative's office would work together to develop an adjustment program from a list of options which they initially put together.

The ITC would continue to play its customary role in defining the boundaries of the trade-impacted industry and in determining whether the requisite degree and causation of injury exist. In addition, the ITC would have several new tasks.

First, the ITC would determine the extent to which rising imports contribute to the industry's injury by comparison with other factors--falling demand at home, rising productivity, and loss of export markets. The relative extent of import-related injury would be expressed in terms of the adverse impact on the volume and price of goods sold and the level of employment. This information would be forwarded to the USTR for guidance in selecting a relief package, and it would be made publicly available to promote informed discussion.

Based on data supplied by the petitioning industry, the ITC would establish an inventory of workers, capital and farmland engaged in the industry as of a defined "inventory date." Eligibility for adjustment assistance would be conditioned on the physical presence of the factors in the industry on the inventory date. After the inventory date is past, new workers, new capital, and new land would enter the industry at their own risk. New entrants would <u>not</u> be eligible for assistance, apart from whatever temporary assistance is conferred by a protected domestic market.

Second, the ITC would establish eligibility criteria (within statutory guidelines) for early retirement, retraining, and relocation benefits for workers, cash assistance to firms, and

cash payments to farmers. The ITC would also spell out the pace at which protection and assistance would be reduced. In other words, the ITC would design both the adjustment and the relief side of the program, subject to statutory guidelines.

Third, the ITC would confer antitrust immunity for firms to meet and discuss plant closures, and to arrange payments between firms that remained open and firms that closed their plants. In other words, the ITC would provide a forum for firms to discuss consolidation and downsizing.

As its fourth task, the ITC would calculate the amount and time profile of public and private resources needed for its relief and adjustment programs. The ITC would then prepare a menu of alternatives to meet the calculated needs. Each alternative would be structured to provide, as nearly as possible, the same quantum of relief, and to require the same pace of adjustment by the domestic industry. The extent of any trade protection would be scheduled by the ITC to decline by a regular amount each year, say by one to three percentage points of tariff or tariff-equivalent protection annually. The support financed by the revenues from import relief would correspondingly decline.

The USTR, in consultation with other Executive branch agencies, the Ways and Means Committee, and the Senate Finance Committee, would assemble a program from the relief menu designed by the ITC. The design of the program would thus reflect the policy concerns of other Executive agencies and the key Congressional Committees.

In choosing among programs, the USTR and its policy colleagues would decide between relief measures which entail more or less government expenditure; which involve more or less protection; which prompt larger or smaller requests by foreign countries for "compensation" or "retaliation"; which distribute greater benefits to prosperous firms and fewer benefits to not so prosperous firms, or vice versa; and which place the burden on consumers or the public at large. In addition to selecting a program, the USTR would be assigned statutory authority for dealing with the compensation and retaliation issues, again subject to consultation with other Executive branch agencies and the key Congressional committees.

After the USTR selected the relief strategy, the ITC would hold periodic hearings (for example, every three years) to determine whether the scheduled rate of degressive protection or income support should be modified, taking into account the pace of adjustment and whether the flow of earmarked public funds or industry-financed programs was adequate.

A Comparison with S. 1544

Another proposal of some similarity to ours was offered last year in S. 1544 by Senators Roth and Moynihan, and was included in the reconciliation legislation until its very last stages. That proposal would place a new low-rate tariff ("up to 1 percent") on all imports and dedicate the resulting revenues to TAA. There are several key similarities between our proposals for TAA reform and S. 1544:

-- both would generate new revenue from trade flows themselves;
-- both would dedicate the trade-generated revenue to TAA, with any excess used to reduce the overall budget deficit;
-- both would seek first to negotiate the new approach internationally, in light of the implications for existing GATT commitments and the desirability of focusing attention on innovative approaches in the context of a new multilateral "round";
-- both envisage some similar uses of the resulting revenues to promote adjustment, such as voucher systems for retraining.

At the same time, there are several significant differences between the proposals. Ours would generate (and perhaps use) trade-related revenues on an industry by industry basis, whereas S. 1544 would do so across-the-board. Ours thus has the virtue of applying the "user cost" principle more precisely and directly, whereas S. 1544 has the virtue of avoiding industry-specific discussions and providing TAA funds for industries (such as footwear) that do not now receive special protection.

A second important difference is that our proposal would generate higher levels of additional revenue for TAA purposes: over $8 billion in new revenue in 1986 if the proposed conversions were immediately carried out for all industries, as opposed to under $4 billion for S. 1544 even with the maximum 1 percent tariff. Our approach could thus fund a more ambitious program of adjustment, and/or provide a more significant contribution to reducing the overall budget deficit.

Third, our proposal would not increase the existing level of protection (assuming a faithful and accurate conversion of existing non-tariff restraints into their tariff equivalents, which would be assured by the required international negotiation under GATT Article XXVIII) whereas S. 1544 would do so to a modest extent. This suggests that our approach might be more easily negotiated internationally.

Fourth, our proposals go beyond S. 1544 in suggesting new techniques for promoting adjustment and providing more generous benefits for both workers and firms. Our goal is to induce them to accept the downsizing which seems required in virtually all adjustment cases.

Conclusion

The Committee could initiate a major change in US trade policy by adopting a self-financed TAA program as outlined in the "discussion draft" and elaborated in this testimony. For the first time, Congress would insist that the costs of import protection to American consumers were captured by the United States and, under any of the more extensive options, returned to those Americans affected adversely by competition from the imports in question. US trade policy would no longer enrich quota brokers in Hong Kong hotels and uncompetitive producers throughout the world.

Dedication of these funds to an improved adjustment program would enable us to deal with the problems of import competition

in a more humane, efficient and cost-effective manner. Such a program would enable American industries to rationalize their production and labor forces at a level which would be competitive in the future without the crutch of government protection, and ease the transition to such a position.

Such a program would also further increase our reliance on market forces and reduce the intrusion of government even in cases where temporary import relief was needed. The scarcity rents generated by relief would be determined by the market, either through auctioned quotas or tariffs, in an orderly way. The rents would be used to help the people hurt by the import flows themselves. The relief could then plausibly be phased down over time with a return to market conditions as soon as possible. I would hope that the Subcommittee will adopt the most extensive possible version of this scheme, and make it the centerpiece of the Comprehensive Trade Policy Reform Act of 1986.

Chairman GIBBONS. All right.
Mr. Litan.

STATEMENT OF ROBERT E. LITAN, SENIOR FELLOW, BROOKINGS INSTITUTION

Mr. LITAN. Yes, Mr. Chairman, thank you.

I request permission to have my prepared testimony with an attached article inserted in the record.

Chairman GIBBONS. Fine. Mr. Valenti and others did not ask for their statements to be put in the record. All statements made today by all witnesses without objection will be placed in the record following their direct statements.

Mr. LITAN. Thank you, Mr. Chairman.

My remarks today will concentrate primarily on the escape clause provisions of the Trade Act and briefly on the trade adjustment assistance program. I will draw on recent research that I have completed on these projects with my colleague at Brookings, Robert Lawrence.

In principle both the escape clause and TAA can be valuable tools of trade policy, both to reduce demands for permanent or long-lasting protection, and to enable the Congress and the executive branch to better resist those demands. But this will only be true if the two programs are designed to be cost effective.

Unfortunately, the TAA program has failed to meet this test. Because TAA benefits have been provided to trade displaced workers only so long as they have remained unemployed, the program has failed to encourage these workers to locate new jobs. Requiring these same workers to enroll in retraining programs as a condition to continuing to get their assistance has also not improved the program. In fact, since 1980 less than 5 percent of trade displaced workers who have entered retraining subsequently found jobs for which their retraining was supposed to qualify them, suggesting that many workers have been enrolling in training programs simply as a way of continuing to collect TAA benefits.

In contrast, the escape clause has performed reasonably well. First, it has not been an open door for protection. As shown in table 1 of my prepared testimony a substantial fraction of the domestic industries that have petitioned the ITC have failed to prove their injury cases. Second, protection granted under the escape clause has, in fact, turned out to be temporary.

Table 2 in my prepared testimony indicates that only three industries that have received some type of import relief since the U.S. escape clause was last modified in 1975 subsequently obtained additional protection after the initial period of escape clause relief had expired.

In contrast table 3 of my prepared testimony illustrates that many protectionist actions taken outside of the escape clause context—either through administrative action or legislation—have been in place for more than 30 years.

In short, there is much about the performance of the U.S. escape clause law that should satisfy the Congress. Nevertheless, there are two proposed changes to the law that, currently appear to have

strong support in Congress, that in my view would certain seriously erode the usefulness of the entire escape clause procedure.

First, certain proposals would weaken the legal test that is required for an affirmative injury finding. For example, H.R. 3777 would eliminate the requirement that increased imports be a substantial cause of serious injury. This proposal is advanced obstensibly on the grounds that a substantiality requirement is not included in the GATT escape clause article XIX.

While this argument is technically true, it overlooks the fact that in another respect U.S. law is already more liberal toward domestic industry than the GATT. When Congress last modified the U.S. escape clause law in 1974, it dropped the GATT requirement that had been present in previous versions that serious injury result from prior trade concessions. The clause "results from prior trade concessions" is no longer in our law.

More fundamentally, as shown in table 1 of my testimony, domestic petitioners have won in 58 percent of the cases that have been brought under the current legal standard, a success rate that is significantly higher than under earlier versions of the law. Relaxing the standards again would run a serious risk of converting the escape clause into an automatic vehicle for protecting virtually any American industry that faces import competition.

The second set of proposals would tie import relief to commitments by the domestic industries to adhere to adjustment plans negotiated by representatives of firms in the industries, labor, and government. While quid pro quos for relief may be appealing on the surface, the conditionality approach to trade policy in my view is seriously flawed.

First, for those industries with many firms conditionality is simply unworkable. What sense does it make to require the entire shoe industry with more than 500 firms or the textile and apparel industry with only 25,000 firms to agree to an adjustment plan? There is simply no way that four managers and four employees from different firms can be "representative" of these industries.

Second, conditionality would very likely lead to excessive investment of scarce capital in import-damaged firms. Representatives of firms and labor on these adjustments plan committees would very quickly realize that the best way to convince the ITC and/or the President that they are entitled to relief is to propose substantial reinvestment. But substantial reinvestment is not generally appropriate for import damaged industries. From our review of 16 U.S. industries that have received some type of import protection over the last three decades, we have found only 1—the bicycle industry—in which domestic production grew after protection was lifted.

Perhaps the best evidence that adjustment plans would be biased toward excessive reinvestment was the congressional decision in 1984 that requires the President to find each year that eight major steel companies are reinvesting "substantially all of their net cashflow in the steel making business" as a condition for continuing to quota protection for the steel industry, which won its section 201 case before the ITC in 1984. In fact, my colleague, Robert Crandell of Brookings has shown that as of 1984 every domestic steel company that invested heavily prior to the 1981-82 recession had vanished or was close to bankruptcy. The only integrated companies

that were still doing business had been the ones that had diversified out of the steel business. Had Congress required the domestic steel industry to make the kind of major reinvestments in steel operations over the last decade it now requires under the 1984 Trade Act, it is possible that not one major U.S. steel producer would be in business today.

Now, some may nevertheless contend that management and labor representatives of the adjustment plan committees would consistently recognize the need for retrenchment. But these advocates then fail to recognize that the adjustment plan process would provide strong incentives for firms to collude.

The conditionality proposals generally would allow any import protection initially to be withdrawn if the industry did not comply with the adjustment plans. For firms this creates a high degree of uncertainty because each firm cannot be assured protection will last unless it knows that other firms are also reducing capacity. But firms can minimize this uncertainty only by coordinating their capacity decisions, an outcome clearly inconsistent with the antitrust laws.

In conclusion, in my view if Congress is going to amend the escape clause at all, I think it should attempt to correct two flaws that are now rendering that clause less effective than it should be.

First, Congress should allow escape clause relief only in the form of tariffs. In contrast to tariffs, quotas totally insulate domestic producers from foreign competition as the American economy expands. As a result, quotas reinforce any oligopolistic patterns in imperfectly competitive industries. Quotas also fail to stimulate the firms in import—sensitive industries to cut costs and to innovate to better meet the demands of American consumers.

Perhaps a more compelling advantage of tariffs in this current environment is that they generate revenue. In contrast, quotas produce windfalls for foreign producers, as Fred Bergsten has outlined.

The best example is the VRA agreement restraining imports of Japanese automobiles, which have allowed Japanese automakers to line their pockets by roughly an extra $2 billion per year.

Recently some have suggested that we go instead to auction quotas. While this would certainly be an improvement over the current mechanism that we have now, I still think the committee ought to be aware that auction quotas are not a substitute for tariffs. Auction quotas, while they generate revenue, still insulate domestic producers against foreign competition as American demand grows and therefore fail to encourage cost cutting.

The final point that I want to make centers on the fact that the escape clause relief has been too uncertain for domestic industries to prove injury to the ITC. One popular solution to this problem is to transfer the decisionmaking authority on relief from the President to the USTR. In my view, this would accomplish little, because the USTR still works for the President. I believe there are better solutions.

First, firms that win escape clause cases should automatically be judged under relaxed antitrust standards if they decide to merge. I recommend this not because I believe that mergers would work wonders to resuscitate these industries, but rather because a liber-

alized merger standard would provide at least some kind of automatic relief to these industries at relatively little downside risk.

In addition, all displaced workers in industry found to be suffering serious injury from imports should automatically be eligible for a new adjustment assistance program. Rather than simply give trade displaced workers extended UI, which does not encourage them to go back to work, we propose that these workers be compensated for a proportion of their loss in earnings in accepting a new job. The compensation proportion would depend on a worker's wage and seniority.

This is an idea that we call earnings insurance, and we think it would provide strong incentives to trade displaced workers to quickly locate new jobs in order to receive their supplemental earnings insurance payments. We would still provide workers in regions of high unemployment with extended UI because it is harder to find jobs in those regions. And we would also encourage retraining by extending loans for workers with repayments tied to future worker incomes.

We have estimated that under highly liberal outline assumptions, this program would cost roughly $1 billion a year, an amount that is easily funded without any new tariffs by simply converting a portion of existing quotas into tariffs or auctioning them off.

Finally, Robert Lawrence and I have outlined in the article attached to my testimony another new proposal for allowing communities to voluntarily insure their tax bases against significant and sudden erosion due to plant closure. This insurance would not only ease the pain suffered by these areas, but would help reduce the pressure exerted by localities for protectionist remedies to keep their plants running.

Thank you very much. I look forward to answering your questions.

[The prepared statement follows:]

Prepared Testimony of Robert E. Litan*

Senior Fellow

The Brookings Institution and Of Counsel,
Powell, Goldstein, Frazer & Murphy, Washington, D.C.
before the

Subcommittee on Trade of the House Ways and Means Committee

April 15, 1986

I am pleased to appear before you today to outline my thoughts on the Subcommittee's important effort in reforming the U.S. trade laws. My remarks draw on recent research I have completed with my colleague at Brookings, Robert Lawrence, which appeared in the fall 1985 issue of the Brookings Review, and is appended to this testimony. An expanded version of this article will be published shortly as a book by Brookings under the title, Saving Free Trade: A Pragmatic Approach.

We chose this title because it not only describes how we believe trade policy should be conducted, but also because it accurately characterizes the approach to trade policy that, for the most part, this country has attempted to pursue since the end of World War II. On the one hand, the U.S. has worked with other nations through the framework provided by the General Agreement on Tariffs and Trade (GATT) to lower the trade barriers that contributed to the worldwide

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*The views expressed here are solely those of the author and not necessarily those of The Brookings Institution, its Trustees, or any other staff members.

Depression of the 1930's. On the other hand, this country has been pragmatic. We have recognized that while freer trade benefits consumers, it often imposes severe costs on firms and workers in import-sensitive industries, who quite understandably have frequently called on Congress to grant them protection from foreign competition.

Accordingly, the U.S. has used two "safety valve" mechanisms both to reduce demands for permanent or long-lasting protection, and more importantly, to enable Congress and the Executive branch better to resist those demands. Specifically, an "escape clause" has been part of American trade law since 1951, which allows the President to grant temporary protection to domestic industries that prove to the International Trade Commission (ITC) that an increase in imports has been a "substantial cause" of serious injury. In addition, between 1962 and 1985 the U.S. was alone among major industrialized countries in providing trade adjustment assistance (TAA) to workers and firms displaced or seriously injured by intense import competition.

In principle, both of these safety valves can be valuable tools of trade policy. But this will only be true if the two programs are designed to be cost-effective. The TAA program has unfortunately failed to meet this objective. Because TAA benefits have been provided to trade-displaced workers only so long as they have remained unemployed, the program has failed to encourage these workers to locate new jobs. Recent requirements that recipients of TAA enroll in retraining programs in order to continue receiving extended

unemployment insurance (UI) payments have not improved the program. We have found that less than 5 percent of trade-displaced workers who entered retraining subsequently found jobs for which their retraining was supposed to qualify them. This suggests that mandatory retraining requirements will simply induce many workers to enroll in training programs simply as a way of collecting TAA benefits rather than searching for meaningful new employment.

In contrast, the escape clause has performed reasonably well. First, it has not been an open door for protection. As shown in Table 1, a substantial fraction of domestic industries that have petitioned the ITC under Section 201 have failed to prove that they are entitled to relief -- 65 percent between 1951 and 1962, 80 percent between 1963 and 1974, and 42 percent since 1974.

Second, protection granted under the escape clause has turned out to be temporary. Table 2 indicates that only 3 industries that have received some type of import relief under the U.S. escape clause law since 1975 subsequently obtained additional protection after the initial period of escape clause relief had expired. Indeed, in one of these instances (color TVs and subassemblies) the added protection took the form of antidumping duties, an entirely different trade law remedy. Perhaps most significant, of the 30 industries that have received some relief under the American escape clause since it was first enacted in 1951, only two -- motorcycles and specialty steel -- remain protected today.

Table 1
Experience Under Successive Escape Clause Regimes

	(1) Cases Brought Before the Tariff Commission (or ITC)	(2) Affirmative Injury Decisions	(3) "Success Rate" for Domestic Interests at the Tariff Commission (or ITC)	(4) Industry Relief Provided	(5) Relief granted "Rate" (4)/(2)
1951-62	116	41	35%	14	34%
1963-74	40	8	20%	2	25%
1975-present	55	32	58%	13	41%

Sources: U.S. International Trade Commission Reports; Jagdish N. Bhagwati, "Market Disruption, Compensation and GATT Reform," World Development, 1976, Vol. 4, No. 12, pp. 989-1020.

Table 2. Industries Receiving Escape Clause Relief Since 1975

Year of Complaint	Industry	Years of Protection	Type of Protection	Further Requests of ITC		
				Year	Type of Case	ITC Decision
1976	Specialty steel	1976-1980	Quota; OMA[a] w/Japan			
		1983-1986	Quota			
1976	Ceramic tableware[b]	1976-1978	Tariff			
1977	Nonrubber footware	1977-1981	OMA	1982	Unfair trade	Terminated
				1983	Unfair trade	Terminated
				1984	Escape clause	Negative
				1985	Escape clause	Affirmative
1977	Color television receivers and subassemblies thereof	1977-1982	OMA	1980	Antidumping	Affirmative
				1984	Antidumping	Affirmative
1977	CB radios	1978-1981	Tariff			
1977	High-carbon ferrochromium	1978-1982	Tariff	1982	Unfair trade	Terminated
1977	Nuts, bolts and screws	1979-1982	Tariff			
1978	Clothespins	1979-1984	Quota			
1979	Porcelain on steel cookware	1980-1984	Tariff	1986	Antidumping	Pending
1980	Mushroom	1980-1983	Tariff			
1983	Motorcycles	1983-1988	Tariff rate quota			
1984	Carbon and certain alloy products	1985-1989	VRAs[c]			

Sources: William Cline, Exports of Manufacturers from Developing Countries, (Brookings Institution 1984); U.S. International Trade Commission, Operations of the Trade Agreement Program, various issues.

[a]Orderly Marketing Agreement.

[b]Cline, Exports of Manufacturers from Developing Countries, 1984.

[c]Voluntary Restraint Agreement; Formal escape clause relief was denied.

Table 3. Major Trade Barriers Imposed by Affecting the United States Outside the Context of the Unfair Trade Practice Laws and the Escape Clause

Product	Barrier	Date Imposed
Apparel	Quotas (initially VRA)	1957 - present
Autos	VRA	1981 - present
Book Manufacturing	Foreign-produced not eligible for U.S. copyright	1891 - present
Dairy Products	Quotas (statutory)	1953 - present
Meat	Global quotas and VRAs	1965 - present
Peanuts	Quotas (statutory)	1953 - present
Petroleum	Quota on National Security grounds	1959-73
Shipbuilding	Merchant Marine Act prohibits use of foreign-built vessels in costal trade	1920 - present
Steel (Carbon)	VRA, Trigger Price Policy	1969-74; 1978-82
Sugar	Quotas and import fees (statutory)	1934 - present
Textiles	Quotas (initially VRA)	1957 - present

Source: William R. Cline, Exports of Manufacture from Developing Countries (The Brookings Institution: Washington, D.C., 1984), p. 56; Gary Clyde Hufbauer, Howard F. Rosen, Trade Policy for Troubled Industries (Institute for International Economics: Washington, D.C., 1986), Table 2.1.

The temporary nature of escape clause protection contrasts with the virtually permanent status of protectionist actions taken outside the escape clause context, either through administrative action or legislation. Table 3 illustrates that in certain of these cases -- namely for textiles, apparel, book manufacturing, dairy products, peanuts, shipbuilding, and sugar -- protection has lasted for more than 30 years. Equally significant, virtually all of the protectionist actions taken outside the escape clause context have restricted the volume of imports (Table 3), whereas escape clause relief has frequently taken the less costly form of tariffs (Table 2), a point which I will elaborate shortly.

In short, there is much about the performance of the U.S. escape clause procedure that should satisfy rather than displease the Congress. Nevertheless two changes to the escape clause law that currently appear to have strong support in Congress would, in my view, seriously erode the usefulness of the entire escape clause procedure.

First, certain proposals would weaken the legal test domestic petitioners must satisfy in order to win an affirmative injury finding from the ITC. For example, the proposed Trade Law Modernization Act (H.R. 3777) would eliminate the requirement that increased imports be a "substantial cause" of serious injury and instead simply require domestic industries to prove that imports have been a "cause" of such injury. Advocates of this approach argue that a substantiality requirement is not included in the GATT escape clause, Article XIX.

While technically true, this argument overlooks the fact that in another important respect the U.S. escape clause law already favors domestic interests more than Article XIX. Specifically, when Congress last modified the U.S. escape clause law in 1974, it dropped the GATT requirement that had been present in previous versions that serious injury result from prior trade concessions, and instead allowed the ITC to reach an affirmative injury finding merely upon a showing of a causal relationship between increased imports and serious injury. As a result, Sections 201 through 203 of the 1974 Trade Act technically no longer constitute an "escape clause" within the meaning of the GATT, but rather serve simply as a vehicle for domestic interests to obtain temporary protection.

More fundamentally, the current legal standard for escape clause relief already is favorable toward domestic interests. As Table 1 indicates, domestic petitioners have won in 58% of the Section 201 cases brought since 1974, a "success rate" significantly higher than in earlier periods. Relaxing the standards again would run a serious risk of converting the escape clause mechanism into an automatic vehicle for protecting virtually any American industry that faces import competition.

I realize this view runs counter to the strong interest in certain quarters for signficantly relaxing the current causation test. Accordingly, if it is needed to prevent the removal of the "substantiality" requirement, the least dangerous compromise in my

opinion would be to clarify that a decline a demand due to an economy-wide recession cannot, by itself, constitute a more important cause of injury than imports. The Subcommittee's "Discussion Draft" trade bill in fact contains this suggestion. Had this kind of amendment been in effect in 1980, the U.S. auto industry would not have lost the Section 201 case it brought in that year. In retrospect, if President Carter had then awarded the auto industry declining tariff protection under the escape clause, the Reagan Administration would not have been compelled by political pressures in Congress to negotiate the voluntary export restraint agreement (VRA) with Japan in 1981, which has turned out to be one of the costliest trade restraints to consumers in recent American history.

The second set of escape clause proposals that also appear to have strong support in Congress are potentially even more ill-advised. Specifically, these proposals would tie temporary import relief to commitments by domestic industries to adhere to "adjustment plans" negotiated by representatives of firms in these industries, labor, and government. On the surface, the "conditionality" approach to trade policy appears sensible because it would require a quid quo pro from industries seeking protection. On closer analysis, however, there are at least three reasons why the approach is seriously flawed.

First, <u>for those industries with many firms conditionality is simply unworkable</u>. What sense does it make to require the entire shoe industry, with more than 500 firms, or the textile and apparel

industries, with over 25,000 firms, to agree to an adjustment plan? Indeed, how is it possible to choose four managers who would be "representative" of the hundreds or thousands of firms in those industries? In fact, it is not possible. Adjustment strategies vary by firm. Perhaps most important, successful strategies simply cannot be predicted in advance.

Second, conditionality would very likely lead to excessive investment of scarce capital in import-damaged industries that could be more productively employed elsewhere in the economy. It would not take representatives of firms and labor on the adjustment plan committees long to realize that the best way to convince the ITC and/or the President that their industries deserve import relief would be to promise substantial reinvestment. Indeed, to do otherwise would give the impression that the members of the industry had themselves "given up" on competing with foreign producers, an impression committee members would be very reluctant to convey.

In fact, however, substantial reinvestment is generally inappropriate for import-damaged industries. From our review of 16 U.S. industries that have received some type of import protection over the last three decades, we found only one -- bicycles -- in which domestic production grew after protection was lifted. In all other cases, domestic production fell after protection ceased, demonstrating that even with government assistance import-damaged industries tend to shrink rather than to expand.

Perhaps the best evidence that adjustment plans would be biased toward excessive reinvestment was the Congressional decision in 1984 to require the President to find each year that the eight major U.S. steel companies are reinvesting "substantially all of their net cash flow" in the steelmaking business, as a condition to continuing the steel export restraint agreements negotiated after the steel industry won its Section 201 case in 1984. In fact, my colleague Robert Crandall has shown that the domestic firms making the largest investments in the steel business have turned in the worst performance. As of 1984, every domestic steel company that invested heavily prior to the 1981-82 recession had vanished (due to bankruptcy or forced merger), or was close to bankruptcy. Had Congress required the domestic steel industry to make the kind of major reinvestments in steel operations over the last decade it now requires under the 1984 Trade Act, it is possible that not one major U.S. steel producer would be in business today.

Advocates of conditionality may nevertheless contend that management and labor representatives on the adjustment plan committees would consistently recognize the need for retrenchment, and therefore agree to modernization that reduces capacity in the industry. To be sure, this outcome might sometimes be negotiated. But these same advocates generally fail to recognize that the adjustment plan process would then provide strong incentives for firms to collude, either explicitly or implicitly. In order to ensure that industry members take the adjustment plans seriously, the conditionality proposals

generally would allow the President or the STR to withdraw any import protection initially granted if he later finds that the industry has not complied with the plan. For firms this creates a high degree of uncertainty, because each will not be assured that the protection will last unless it also knows that other firms are reducing capacity in compliance with the plan. The best way to minimize this uncertainty is for the firms in import-damaged industries to coordinate their capacity decisions, an outcome clearly inconsistent with the antitrust laws.

Japan has at least recognized this problem and explicitly legitimated so-called "crisis cartels". In addition, the proposed conditionality mechanism in the Trade Enhancement Act (S. 1860) would provide a limited antitrust exemption for firms participating in adjustment plan discussions. Although an exemption process might facilitate participation, is this really what this country wants -- to lay the foundation for collusion among firms in industries, such as autos and primary metals, that may already be imperfectly competitive?

One of the virtues of the current escape clause process is that it has allowed firms in import-damaged industries themselves to decide how, if at all, the benefits from temporary protection should be applied. Adjustment by committee rather by the market is a recipe for wasted resources and, perhaps even worse, anti-competitive joint conduct.

If, however, Congress were to amend the escape clause at all at this time it should attempt to correct two flaws that render the mechanism less cost-effective in blunting demands for protection than it should be.

The first problem with the current escape clause provisions is that they have long permitted temporary import relief to be awarded in the form of either a tariff or a quota (or an orderly marketing agreement). Indeed, Table 2 highlights that in 6 of 12 instances in which import restrictions have been imposed under the escape clause since 1975, the restrictions have been quantitative. Quotas are inferior to tariffs, however, as a means for protecting domestic industries for several reasons. Unlike tariffs, which permit foreign goods to enter the U.S. market freely, but with a price penalty, quotas insulate domestic producers from foreign competition as our economy expands and consumer demands grow. As a result, quotas not only reinforce any oligopolistic pricing patterns in imperfectly competitive domestic industries, but they also fail to stimulate the firms in these industries to cut costs and innovate to better meet the demands of American consumers. The most recent evidence of these effects is the recent 2.9% price increase announced by General Motors, which along with the other American auto companies has benefitted handsomely from the VRA limiting exports of Japanese cars to the U.S.

Perhaps a more compelling advantage of tariffs in light of the deficit reduction targets mandated by Gramm-Rudman-Hollings is that they generate revenue for the federal government. In contrast, quotas produce windfalls for foreign producers by increasing the prices they can charge American consumers -- windfalls that can be used to undermine the competitive position of domestic producers even further. For example, estimates made by my Brookings colleague, Robert crandall, indicate that the auto VRA has simply allowed Japanese producers to line their pockets by roughly $2 billion extra per year. Robert Lawrence and I have calculated that a tariff that would have provided the same degree of protection to American auto manufacturers as the VRA produced in 1983 would have generated $1.85 billion in revenues. If used for adjustment, this amount could have compensated all reemployed auto workers for losses in earnings in their new jobs and also could have paid $16,000 to each remaining unemployed auto worker!

<u>These clear advantages suggest that the escape clause would be far more cost-effective if the President could award relief only in the form of declining tariffs</u>. In addition, because many domestic industries have rightfully complained that exchange rate movements can often nullify or significantly impair the value of tariff protection, we suggest that the President be authorized to order the periodic adjustment of the tariff rate to take account of exchange rate fluctuations. For example, an initial tariff of 10% could be adjusted upward to 20% if the multilateral trade-weighted value of the dollar

rose by 10% (since otherwise the dollar increase would cheapen the dollar price of foreign products by an amount equivalent to the tariff).

I realize, of course, that limiting escape clause relief to tariffs is not currently high on the agenda of those who want to amend the escape clause. However, there is interest in encouraging the auctioning of any quotas that the President may award to successful escape clause petitioners. Although auction quotas certainly generate revenue, they still insulate domestic producers against foreign competition as American demands grow, and thus fail to encourage both cost-cutting and competitive pricing by domestic firms. Auction quotas should not, therefore, be viewed as substitutes for tariffs.

The second problem with the U.S. escape clause mechanism is that relief is too uncertain for those domestic industries that prove to the ITC that imports have caused them serious injury. As shown in Table 1, only 13 of the 32 industries that have won their cases at the ITC since 1975 have actually received relief. The uncertainty of relief is undesirable because it threatens to make a mockery of the escape clause process. Why should domestic industries spend several hundreds of thousands of dollars in legal fees, if not more, proving to the ITC that imports have caused serious injury, if at the end of the process, they may walk away empty-handed? Why not run instead to Congress for protection? The American footwear industry answered this question last fall when President Reagan denied escape clause relief, and then

successfully persuaded Congress to tack onto the textiles quota bill legislated quotas for American footwear manufacturers as well.

One popular solution to this uncertainty problem offered in various Congressional proposals, including the subcommittee's Draft Discussion trade bill, is to transfer the authority for making relief decisions to the Special TradeRepresentative (STR). In my view, this would accomplish little because the STR still works for the President.

I believe a better solution lies in the following approach. First, firms in domestic industries that win escape clause cases at the ITC should automatically be judged under relaxed antitrust standards if they merge, provided the industries are not also benefitting from some other type of trade protection. I recommend this not because I believe that mergers in import-damaged insutries would work wonders to resuscitate troubled firms, but rather because a liberalized merger standard would provide at least some automatic relief to industries that win their escape clause cases at little downside risk. After all, if a domestic industry is determined to be seriously injured by import competition, that same competition should continue to discipline any domestic producers that may decide to merge.

The Administration's proposal to prohibit mergers involving firms in import-damaged industries only where the mergers raise a "significant probability" that competition would be significantly weakened is a good start. However, the Administration has also proposed that <u>all</u> mergers under Section 7 of the Clayton Act be judged

under the same standard, so that it is not clear how the Administration's merger package, considered as a whole, would provide special relief for import-damaged industries. I would propose instead that the relaxed merger standard require the antitrust enforcement agencies and the courts to take into account, in determining the relevant geographic market in which firms in import-damaged industries compete, all production or capacity of foreign exporters to the U.S. market. If foreign manufacturers currently exporting to the U.S. have shipped goods in such volumes that U.S. firms have been seriously injured, then even small price increases by domestic firms should induce these exporters to significantly enlarge their export levels. This effect can be approximated by counting all production by foreign exporters (wherever marketed) in computing the size of the U.S. market and the shares of domestic competitors within it.

The second component of automatic relief we would recommend is that all displaced workers in industries found to be suffering serious injury from imports be eligible for a new adjustment assistance program. Rather than give trade-displaced workers extended UI, we propose that supplemental TAA payments be made in the form of <u>earnings insurance</u>. That is, workers would be compensated for a proportion of their loss in earnings in <u>accepting a new job</u>. For example, a trade-displaced auto worker previously making $30,000 per year who finds a new job paying $20,000 would receive, say, 50% of the $10,000 difference, or $5000, for a year, and perhaps a lesser amount the

second year. Older workers could receive a higher degree of compensation; younger workers less.

Earnings insurance would provide strong incentives to trade-displaced workers to quickly locate new jobs in order to receive supplemental earnings insurance payments. Workers in regions with especially high rates of unemployment could still continue to receive extended UI for a fixed period. And worker retraining could be encouraged by extending loans, with repayments tied to future worker incomes. We have estimated that under highly liberal outlay assumptions, such a program would cost roughly $1 billion per year, an amount easily funded without any tariffs by simply converting a portion of existing quotas into tariffs. Nevertheless, we would suggest that the revenues generated by any new temporary tariffs imposed under the escape clause in the future be earmarked to fund the adjustment assistance effort.

Finally, we have outlined in the attached article a new proposal for allowing communities to voluntarily insure their tax bases against significant and sudden erosions. This insurance would not only ease the economic pain suffered by local areas when large plants shut down for any reason, but would help reduce the pressure exerted by local areas for protectionist remedies to keep existing plants running.

Four Dollars

THE BROOKINGS REVIEW

Fall 1985

Tackling the Trade Problem

Robert Z. Lawrence and Robert E. Litan on Adjustment Strategies to Preserve Free Trade

Martin Neil Baily and Alok K. Chakrabarti on Innovation and U.S. Competitiveness

Edward J. Lincoln on U.S.-Japan Economic Relations

Edward M. Bernstein on America as an International Debtor Country

Plus: Roger B. Porter on How the White House Works

Living with the Trade Deficit: Adjustment Strategies to Preserve Free Trade

Robert Z. Lawrence and Robert E. Litan

SUPPORTERS of free trade are on the defensive. A rising trade deficit—threatening to top $150 billion this year—and sluggish economic growth have encouraged the introduction of more than 300 bills in Congress to restrict access by foreign goods to the U.S. market. Unless the trade gap narrows, the prospects are good that some type of protectionist legislation will be enacted before the 1986 mid-term congressional elections.

Most economists decry this apparent drift toward protectionism. They tirelessly point out that the primary reason for the high and rising trade deficit is the succession of record federal budget deficits, not the barriers to trade maintained by other nations (see box). After all, they reason, the trading system is no more unfair to the United States today than it was in 1981 when the United States enjoyed a positive trade balance in manufactured goods.

At the same time, however, there is growing concern among both politicians and economists about the long-range implications of the current trade imbalance. Last spring, the United States became a net debtor nation for the first time since 1914, largely as a result of unprecedentedly high borrowing from foreign creditors who help to finance the growing trade deficit. Continued increases in debt owed to foreign nations will ultimately be paid for by sacrifices in future living standards, through shipments to foreign purchasers of U.S.-produced goods that American consumers would otherwise enjoy. If this debt repayment is attended by a substantial depreciation of the dollar—which many economists believe is inevitable—the cost of imported goods will climb and the rate of inflation will increase.

Erecting trade barriers here, either as bargaining chips or as purely protectionist devices, would only make matters worse. Added trade restrictions would strengthen the dollar and reduce the competitiveness of American goods in world markets. Also, a turn toward protectionism by the United States could trigger retaliation by other countries, leaving all trading nations worse off, as occurred in the 1930s after the United States passed the infamous Smoot-Hawley Tariff Act. Finally, curtailing imports from countries now heavily in debt, such as Brazil and South Korea, could strain the American banks to which this debt is owed and threaten the viability of an already fragile financial system.

Many of the new congressional advocates of protection are cognizant of its dangers, but argue that protectionist measures are needed to close the worsening trade gap. One cynical explanation is that lawmakers are using the growing trade deficit to make foreign countries the scapegoats for the recent hiatus in the U.S. economic recovery. A more compelling explanation is that lashing out at foreign trade barriers can be more attractive politically than tackling the complex and divisive task of reducing the principal cause of the current trade imbalance: the federal budget deficit, which most forecasters outside the administration expect

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"Rather than acceding to protectionism, lawmakers should develop effective policies for easing the dislocations induced by trade. . . . *Put in economic terms, aid for trade-injured parties can reduce both the demands for protection and the willingness of elected leaders to supply it."*

to exceed $100 billion a year through the end of the decade.

In such an environment, repeated calls by economists, the news media, and other opinion leaders for budget discipline as a means of paring the trade deficit are likely to fall on deaf ears in Congress, which is pressured continually by workers and firms in trade-sensitive sectors of the economy that have been battered by the strong dollar. To be sure, the dollar has weakened somewhat in the wake of the Treasury Department's recent commitment to intervene with the finance ministries of Japan, England, France, and West Germany in foreign exchange markets. In addition, the political momentum behind protectionism abated somewhat following the administration's announcement of its intention to step up enforcement of the laws against unfair trade practices. Nevertheless, the political impulses to embrace protectionist remedies remain strong. They will continue to push the administration away from policies favoring freer trade; even more dangerously, they could lead to concrete protectionist actions should U.S. economic growth continue to stall or the economy slide into recession.

Rather than acceding to protectionism, lawmakers should develop effective policies for *easing the dislocations induced by trade*. Politicians continue to face pressures for protectionism from firms, workers, and communities adversely affected by import competition; lawmakers can and will find it difficult to resist calls for trade barriers if they cannot point to policies that mitigate the economic pain caused by changes in trade patterns. Put in economic terms, aid for trade-injured parties can reduce both the demands for protection and the willingness of elected leaders to supply it.

The United States has attempted in the past to provide such assistance but with mixed success. We believe that the nation can do better, but only if programs are designed to promote, rather than delay, adjustment to change. The cruelest form of aid is one that temporarily salves an economic wound, but that, in the end, leaves recipients in even worse shape to deal with the harsh competitive realities of the global marketplace. The danger of this outcome can be reduced if trade assistance programs meet the following criteria:

— Assistance must be temporary, so that it does not encourage dependence.

— Assistance must be transparent, so that voters and politicians are aware of its costs.

— Assistance must complement, rather than replace, market forces.

Below we present several detailed proposals based on these criteria. In part, our suggestions envision a fundamental redirection of two programs already in place: the temporary protection available through the current U.S. "escape clause" law and the help provided to some workers under the trade adjustment assistance program. Under our proposals, two types of aid would be triggered by an International Trade Commission (ITC) determination that an industry is suffering serious injury because of import competition. First, firms in the industry would be eligible for temporary protection from imports in the form of tariffs, but not quotas. Mergers of such firms would be judged under antitrust standards that recognize global competition. Second, workers in the industry would be eligible automatically for payments geared to their losses in income and for loans to finance retraining, with repayments based on future income and collected through the income tax system. We conclude by outlining a novel plan, not tied to ITC determinations, for enabling communities to insure against sudden losses in their tax bases due to trade-related or other economic dislocations.

Assisting Adjustment by Industry

Special assistance programs for industries adversely affected by import competition are considered justified on economic grounds in two circumstances. First, when changes in trade patterns reflect fundamental shifts in comparative advantage, targeted industry assistance can cushion the economic pain suffered by firms, their workers, and the communities in which they are located. Second, when a sudden surge of import competition is due to temporary factors, industry aid can prevent or minimize unnecessary losses in physical and human capital. For example, a nation may have a long-run comparative advantage in producing high-quality shoes or clothing. However, due to sudden relaxations in trade barriers or movements in exchange rates, its footwear and clothing industries may be temporarily unable to compete effectively with foreign producers. Without some short-term assistance to tide them over, firms in these industries can be severely and permanently damaged, large capital investments destroyed, and a trained labor pool lost forever.

The Current Assistance Program

In recognition of the potential value of assistance in the above circumstances, the United States and other nations allow temporary protection of domestic industries. The General Agreement on Tariffs and Trade (GATT), currently signed by over 80 nations, permits member countries to "escape" temporarily from tariff concessions and other obligations under the agreement if, as a result of such concessions, imports threaten or cause serious injury to domestic producers.

The U.S. escape clause law, set forth in sections 201 through 203 of the Trade Act of 1974, allows relief for up to five years if domestic industries can demonstrate to the ITC that they face serious harm from import competition. (This law is more liberal than the GATT because it permits temporary protection even if the harm to the domestic industry is not a result of the removal of trade barriers under the GATT.) Import protection is not automatic, however. Even when the ITC finds the requisite serious injury, the president has substantial discretion: He may impose tariffs or quotas; negotiate orderly marketing agreements (OMAs), which are in effect bilateral quotas; recommend expeditious consideration of worker requests for adjustment assistance; or grant no relief at all.

The principal advantage of the escape clause is that it establishes an administrative mechanism that removes pleas for protection from the domain of elected officials. The clause has been fairly successful at keeping protection temporary. Of the 30 industries that have received protection in Section 201 cases since 1950, only two—motorcycles and specialty steel — remain protected today. By contrast, protections obtained directly from the Congress or through country-to-country agreements (as in the case of quotas for imports of textiles, beef, and sugar) have as a practical matter been permanent. Indeed, it is unfortunate that Congress has not required the ITC to provide regular reports on the impacts of these measures on consumers, firms, and workers. Such reports would at least expose to public view the costs and benefits of continued protectionism — and Congress should provide for them if it decides to give permanent quota protection to the textile, footwear, and other domestic industries.

Criticisms of the Current System and Some Proposals for Change

The escape clause mechanism, however, is an imperfect method for assisting adjustment by trade-injured firms. Experience with other kinds of trade restraint suggests that protectionism, even if it is temporary, is expensive because it raises prices of all products—both foreign and domestic—in a protected market. Susan Hickok of the Federal Reserve Bank of New York estimates that current U.S. trade barriers are costing consumers at least $14 billion per year. Our colleague, Robert Crandall, has calculated that one barrier — the so-called "Voluntary Restraint Agreement" that limited exports of Japanese automobiles to the United States — alone cost American consumers over $4 billion annually in higher prices, until the arrangement was allowed to expire earlier this year. According to Crandall, the cost per job saved in the automobile industry was $160,000 per year — more than four times the average annual compensation of auto workers!

Not surprisingly, therefore, most economists urge that if trade-related assistance is to be provided at all to industry, it take the form of direct subsidies. In principle, subsidies are more efficient than tariffs or quotas because they do not distort the relative prices of goods and, therefore, do not disturb consumption patterns. However, in the current budget climate, it is unrealistic to expect Congress to adopt this "first-best" solution. Moreover, it is questionable whether direct subsidies allotted through the political process would be as efficient as is often thought. In theory, subsidies should be allocated to those firms offering the highest prospective returns. In practice, the political process tends to allocate subsidies on bases other than pure economic criteria.

Of course, the design of a non-subsidy protection program presents its own set of difficulties. One challenge is to ensure that any protection granted is cost-effective. This goal can be realized only if the form of protection promotes rather than delays adjustment; otherwise, society will be forced to suffer the pain of higher prices without reaping the benefits that protection is designed to achieve.

A second challenge is to avoid making protection either too easy or too difficult to obtain. If it is too readily granted, protection will be awarded in many instances in which it is not appropriate, producing unnecessary costs for consumers. On the other hand, if escape clause relief is rarely forthcoming, domestic industries and their workers will seek other, perhaps more lasting and invidious forms of protection directly from the Congress. For example, President Reagan's decision in September, 1985, to reject the ITC's recommendation that the U.S. shoe industry receive temporary import protection is widely credited with intensifying protectionist sentiment in Congress. The result could be legislated protection, for years to come, of the U.S. shoe industry and other domestic industries; this would be far more costly to consumers than the declining quotas for

"One challenge is to ensure that any protection granted is cost-effective. This goal can be realized only if the form of protection promotes rather than delays adjustment; otherwise, society will be forced to suffer the pain of higher prices without reaping the benefits that protection is designed to achieve."

The Link Between Federal Budget Deficits and Trade Deficits

The U.S. current account — the net balance of exports and imports of goods and services — can be directly linked to the U.S. budget deficit. This is because the current account balance is, by definition, equal to the difference between national saving and national investment. At any given level of employment, if the government seeks to increase its consumption, either the private sector will have to consume less or the goods will have to be obtained from abroad. Thus, given private investment and savings behavior, an increase in the government deficit will translate, dollar for dollar, into a decline in the current account balance. This means the size of the current account balance is not so much an indicator of a nation's competitiveness as it is of the nation's spending behavior.

These principles can be derived algebraically from the definitions of Gross National Product (GNP) and Gross National Income (GNI), which must be identical. GNP is the sum of Private Consumption (C), Private Investment (I), Government Spending (G), Exports of Goods and Services (X), minus Imports of Goods and Services (M), or

$$GNP = C + I + G + X - M.$$

GNI, meanwhile, equals the sum of Private Consumption (C), Private Saving (S), and Tax Revenues of the Government (T), or

$$GNI = C + S + T.$$

Since GNP must equal GNI, the above two identities can be set equal to each other, as follows:

$$C + S + T = C + I + G + X - M.$$

After subtracting C from each side, these terms can be rearranged into the following fundamental identity:

$$(S - I) + (T - G) = X - M,$$

or Net Private Saving + Net Government Saving = Current Account Balance.

In short, the current account balance equals the sum of net private and government saving. Figure 1 shows what has happened to each of the components of this identity since 1977. Significantly, the current account balance began to turn negative as the total government deficit (dissaving) began to rise. The current account balance has deteriorated most sharply since 1982, when net private saving dropped precipitously and the total government deficit was then exceeding 3 percent of GNP.

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footwear imports recommended by the ITC.

Many members of Congress are dissatisfied with the current U.S. escape clause law, and a variety of proposals have been made to change it. Unfortunately, some of these could actually reduce the capability of the escape clause mechanism to meet the two challenges just discussed.

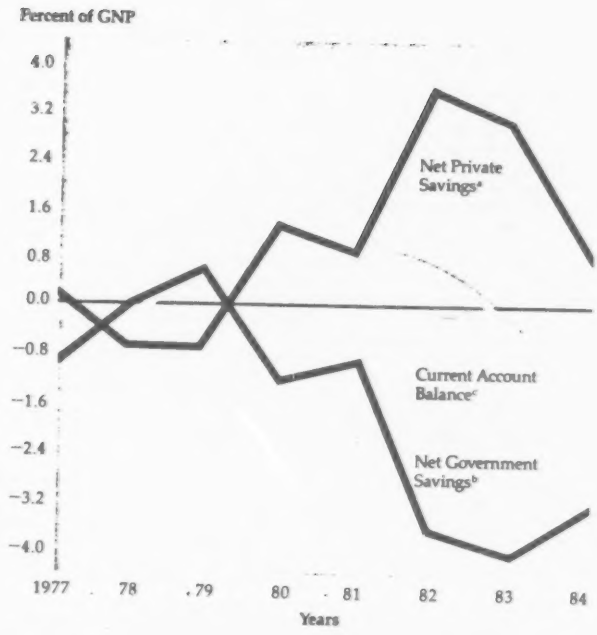
One class of proposals, for example, would weaken the current legal causation standards, by which the ITC determines whether an industry's poor economic health has been caused by import competition. These proposals are difficult to justify in light of experience under Section 201. Since the standards were last eased in the 1974 Trade Act, the ITC has found import-induced injury in 32 of the 55 cases in which petitions for escape clause relief have been filed — a "success" rate for domestic industries of almost 60 percent. Since some undeserving cases are now presented to the ITC, this proportion suggests that further relaxation of the causation test could yield an excessive degree of protection.

Another class of suggestions would make import relief conditional on commitments by domestic industries to modernize and reinvest. The model for this conditionality approach is the 1980 loan guarantee package for Chrysler, which Congress approved only after management and labor at the company agreed to a number of conditions on the firm's operations, including limits on employee compensation. Last year, Congress extended the conditionality concept to the steel industry, which benefits from export restraint arrangements with other steel-exporting countries. In the 1984 Trade Act, Congress conditioned the continuation of these arrangements on an annual presidential certification that major U.S. steel companies are reinvesting all their net cash flow in the steel business.

However, the Chrysler analogy is inapposite to the trade context. It is one thing for a creditor, such as the U.S. government, to impose conditions on a single debtor as a price for receiving credit or other financial assistance. It is quite another thing for government, not acting as a creditor, to negotiate conditions for an entire industry. That process inevitably facilitates coordination by domestic competitors of investment plans, product strategies, and even pricing decisions. The result can be cartel-like behavior that is totally at odds with U.S. antitrust laws and inconsistent with the interests of American consumers.

Equally significant, the conditionality approach violates our criterion that trade relief not be permitted to replace market forces. Conditionality unjustifiably presumes that government officials possess knowledge or information superior to that of the private sector. However, as in the 1984 Trade Act's reinvestment requirements for the steel industry, the bias of government will always be toward the expansion and modernization of a trade-injured domestic industry. Economic reality often confutes that bias; trade difficulties generally signify a need for *exit* from an indus-

Figure 1.
Savings and Current Account Balances as Percent of GNP, 1977–84



[a] Equals gross private saving minus gross private investment, as percent of GNP.

[b] Equals total revenues minus expenditures of all governments (federal, state, and local), as percent of GNP.

[c] Equals exports, minus imports (goods and services), as percent of GNP.

try, not for additional investment in it. Indeed, our analysis of a sample of 16 industries that received some type of import protection over the last two decades indicates that only one of them, the bicycle industry, increased its production and employment levels after protection was removed. The rest shrunk in size, although some were more successful than others in developing and introducing new products and technologies. Had the government required each of these industries to meet the kind of reinvestment conditions imposed on the steel industry in 1984, much investment would have been wasted.

A final class of proposed reforms stems from congressional criticism of how much discretion the current escape clause law allows the president once the ITC determines that import competition has seriously injured a domestic industry. Since 1975, the president has granted import relief in only 13 of the 32 cases in which the ITC has made an affirmative escape clause finding (although in five other instances, he has recommended expedited consideration of adjustment assistance for displaced workers). Given this record, some lawmakers have suggested the elimination of presidential discretion to accept or reject the ITC's import relief recommendations. Others have urged that the decision to impose import barriers be vested in the United States trade representative (USTR), subject to a presidential override. This proposal seems to assume that the USTR would be more likely than the president to grant import relief once the ITC made an affirmative injury finding.

We favor some narrowing of presidential discretion under the escape clause procedure, but we do not support the proposals lawmakers have so far considered. Granting automatic import protection to industries found to be suffering from import-induced injury would run a dangerous risk of imposing too much protection. This would not only harm consumers, but damage relations with foreign trading partners. On the other hand, a transfer of import relief authority to the USTR would be unlikely to accomplish the objectives of its proponents, since the head of that office serves at the pleasure of and reports to the president.

Our Alternative Proposals

We recommend that the current law be changed in two respects. First, if the president decides to grant any import protection at all under the escape clause, he or she would be limited to imposing a four-year schedule of declining tariffs. In addition, all existing quotas (such as those on textiles, steel, beef, and sugar) would be replaced with tariffs set in advance to decline, but perhaps over periods longer than the five years provided for in the current escape clause. The first-year tariff levels would be established through auctions of quota rights.

Second, although the current legal standards for proving import-induced injury should remain intact, two compo-

nents of relief should be triggered *automatically* upon an affirmative finding by the ITC. Workers in an affected industry who are laid off in the four years following the filing of a successful petition would become eligible for adjustment assistance (as described below). Revenues from any tariff imposed under the escape clause law would be earmarked to fund the assistance, with supplements from general appropriations as required. In addition, firms in an affected industry would be judged by proposed mergers involving antitrust standards that gauge competitive impacts in terms of the international market, rather than just the domestic one, provided that the industry is not benefiting from import protection. A change of this sort, which the administration has also been considering, would make approval of such mergers more likely.

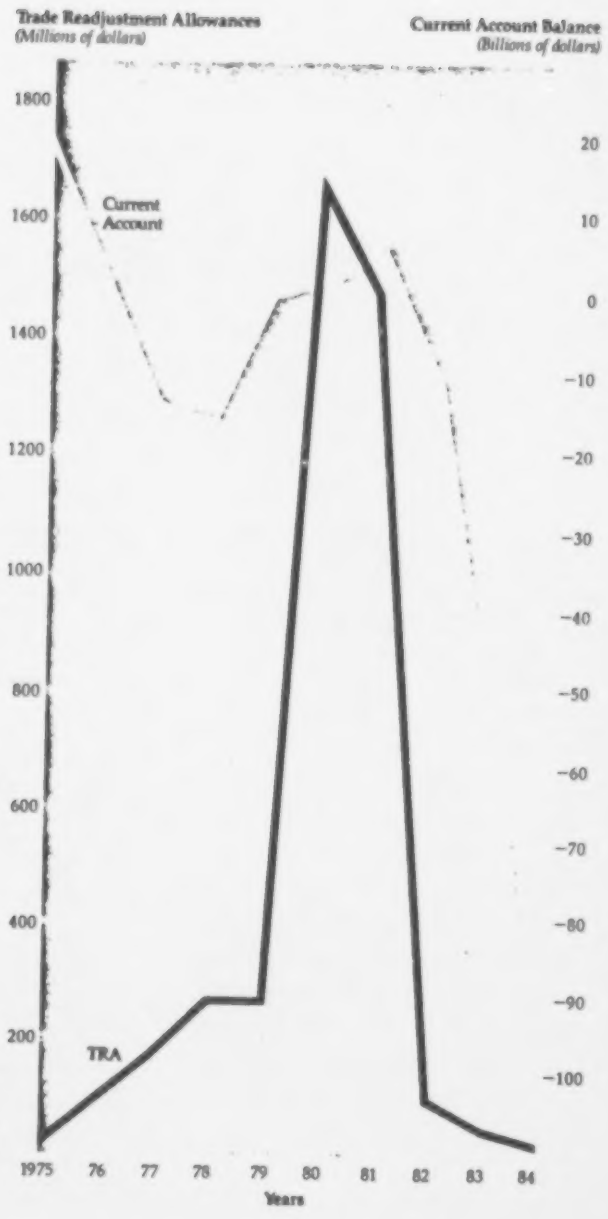
"Unlike tariffs, the costs of which are transparent to consumers and lawmakers, quotas pose hidden costs. Perhaps more important, they make it easier for domestic producers with market power to increase their prices."

This plan has a number of advantages. Its first feature eliminates the least cost-effective means of providing temporary industry assistance: quotas or OMAs. Unlike tariffs, the costs of which are transparent to consumers and lawmakers, quotas pose hidden costs. Perhaps more important, they make it easier for domestic producers with market power to increase their prices. Tariffs penalize imports, but also allow them to enter freely and act as a competitive check on outsized price hikes. Moreover, tariffs yield additional revenue for the government; quotas do not.

The second aspect of the plan—the automatic relief components—should provide sufficient ammunition to lawmakers to fend off demands for legislated protection. In contrast with current law, which vests certification authority in the ITC for import relief and in the Labor Department for adjustment assistance, the proposed plan would make both kinds of relief contingent on a single proceeding. Workers adversely affected by trade would not have to wait for adjustment assistance, which in the past has often become available only after displaced workers have already found new employment.

Finally, the proposed revision of antitrust standards for mergers involving companies in impacted industries would be, compared to the present system, a more socially productive strategy for inducing such firms to seek Section 201 relief instead of legislated alternatives. Under current antitrust law, merger standards are relaxed only for specific failing companies, not for all firms in a particular industry, and, in fact, the criteria for qualifying as a failing company are rarely met. In addition, until recently government assessments of the competitive impact of proposed mergers have rarely taken foreign producers into account. Our proposal would force antitrust officials to recognize that firms

Figure 2.
Trade Readjustment Allowances (TRAs) and Current Account Balance



Note: TRAs based on fiscal years, trade balance on calendar years.

Sources: Employment and Training Administration, Dept. of Labor, unpublished data; Economic Report of the President, Council of Economic Advisers, February, 1985; Economic Indicators, Council of Economic Advisers, August, 1985.

Table 1.
Trade Adjustment Assistance Data, Fiscal Years 1977–84

		FY 1977–81	FY 1982–84
(1)	Total number of workers receiving TRA benefits	1,211,206	76,316
(2)	Total number of workers who entered retraining	46,504	23,876
(3)	Worker retraining ratio (2)/(1)	3.84%	31.29%
(4)	Total number of workers who completed retraining	16,926	11,055
(5)	Retraining completion ratio (4)/(2)	36.40%	46.30%
(6)	Total number of placements after retraining*	3,509	968
(7)	Placement retraining ratio (7)/(2)	7.55%	4.05%

*Placements, as a result of retraining, based upon specific job definitions used by state employment service agencies.

Source: Employment and Training Administration, Office of Trade Adjustment Assistance, Department of Labor.

meriting relief under the escape clause are competing in world markets in which, in all probability, fewer firms with less capacity can survive. We reject, however, the Commerce Department's proposal to exempt such firms from merger standards altogether. This could produce highly concentrated markets, to the detriment of consumers.

Our plan does raise one complication in light of the current GATT rules for escape clause actions, which require the United States and other signatories to compensate trading partners when erecting tariff barriers. We believe that this requirement should be suspended when protection results from a transparent legal process and takes the form of self-liquidating tariffs. An exception in these circumstances would be far more in keeping with the spirit of the GATT than the current compensation provisions, which, unfortunately, countries have avoided by resorting to discriminatory quota and voluntary export restraints that threaten to undermine market-based trade.

Assisting Adjustment by Workers

The Current Assistance Program

In principle, there is no reason why workers displaced as a result of import competition should be treated better than those dislocated because of other developments, such as technological improvements or shifts in demand patterns. Nevertheless, when it was first introduced in 1962, trade adjustment assistance for workers was justified as a means of compensating those adversely affected by tariff reductions. Currently, such assistance can be viewed as compensation for the more general dislocation costs of open trade. Presidents Ford and Carter, when subject to politically pressing demands for protection during election years, made effective use of trade adjustment assistance for affected workers. As shown in Figure 2, however, the Reagan administration has severely curtailed the most important component of trade adjustment assistance, Trade Readjustment Allowances (TRAs), despite unprecedented trade pressures.

Unfortunately, defects in the design of the trade adjustment assistance program in recent years have obscured its potential usefulness as an anti-protectionist device. First, the manner in which TRA assistance has been provided has tended to discourage, rather than facilitate, worker adjustment. Congress recognized this problem in 1981 when it abandoned the previous TRA compensation system, which provided assistance to workers only during weeks in which they also collected unemployment insurance. Congress believed that this system encouraged displaced workers to stay home, rather than to seek new employment.

The new TRA compensation system, urged upon Congress by the Reagan administration and adopted in 1981, attempts to correct the incentive problem. Under the new system, trade-displaced workers not enrolled in retraining programs are eligible to collect TRA only after they have exhausted their unemployment compensation benefits. The period during which they get either type of aid may not exceed 52 weeks. For example, a worker who has received 39 weeks of unemployment compensation can then be eligible for no more than 13 weeks of TRA. (There is an exception to this rule: A worker can qualify for an additional 26 weeks of TRA payments by enrolling in a retraining program.)

The Reagan-era TRA program appears to have encouraged trade-displaced workers to pursue retraining, but not necessarily to search for and obtain new jobs. As shown in Table 1, the fraction of all workers receiving TRA benefits who entered retraining programs has increased sharply during the Reagan administration — from 3.8 percent in fiscal years 1976–81 to 31.3 percent in fiscal years 1982–84. However, while the proportion of workers who have finished retraining programs has also risen, the percentage actually obtaining jobs for which their retraining qualified them has fallen — from 7.6 to just 4.1 percent. These figures suggest that the TRA compensation system adopted in 1981 may have encouraged some workers to undertake retrain-

"These figures suggest that the TRA compensation system adopted in 1981 may have encouraged some workers to undertake retraining programs merely to continue collecting TRA benefits rather than searching for meaningful employment."

ing programs merely to continue collecting TRA benefits rather than searching for meaningful employment.

More generally, Table 1 indicates that, despite the incentives adopted by Congress in 1981, the preponderance of trade-displaced workers—68 percent—have *not* sought retraining. These workers are simply not being encouraged to find work by the 1981 TRA compensation system, which tacks TRA payments onto the end of the unemployment compensation period.

The second problem with previous trade adjustment assistance programs is that the levels of compensation they have provided have borne a highly imperfect relationship to the economic losses that trade-displaced workers have actually sustained. In principle, those losses are equal to the total earnings missed due to unemployment plus the decline in earnings capacity in subsequent employment. For example, a steelworker who because of import competition is let go and must eventually accept a job as an auto mechanic loses not only income during unemployment, but also the value of his or her unutilized steel-making skills (including both forfeited "human capital" and accumulated seniority).

Current and previous TRA compensation formulas have taken account of only the first of these components of earnings loss. The pre-1981 compensation system, for example, provided TRA and unemployment compensation benefits totaling 70 percent of a worker's former gross weekly wage (but not more than the national average of weekly manufacturing wages), minus amounts received for retraining and 50 percent of part-time earnings. Since 1981, displaced workers have been entitled only to extended TRA benefits equal to previous unemployment compensation amounts, which are based roughly on a worker's prior earnings. Neither compensation formula has reflected declines in the earnings capacities of workers in subsequent employment. Two individuals who are unemployed for the same length of time may ultimately find new jobs paying vastly different wages, but under the present system both would receive the same amount of TRA.

Current Reform Efforts

At this writing, Congress is considering a reform bill, authored by Senator William V. Roth, Jr., that would only partially cure these defects. The Roth proposal would extend the maximum benefits period from 52 weeks to 78 weeks. It would require workers receiving benefits to be enrolled in, or to have completed, a training program funded by a $4,000 job retraining voucher. Vouchers would be redeemable for training in a variety of programs, including those under the Job Training Partnership Act, those approved by the secretary of labor, and those conducted without federal support by private firms. The Roth plan would be financed by an across-the-board import fee of up to 1 percent; the precise level would be set by the president. Congressman Donald J. Pease has introduced a House bill similar to the Roth proposal.

Although the Roth-Pease approach makes a constructive effort to increase worker skills, it has several important flaws. First, it would force workers to enroll in retraining simply to obtain extended unemployment compensation, rather than because the retraining would be cost-effective. Training may be useful for some workers, but a waste of time for others. Indeed, the track record of the Reagan administration's TRA program, in which only 4.1 percent of workers were placed in jobs for which they were trained, points to the limitations of this approach. In our view, subsidized training should be an option available to displaced workers, but it should be neither mandatory nor free.

A second flaw in the Roth-Pease proposal is that by extending unemployment benefits but not compensating workers who find alternative employment, it would continue the subsidization of those who fail to seek new jobs. Finally, although the basic rationale for adjustment assistance is to compensate those hurt when trade is kept free, the Roth-Pease program would also perpetuate the error of granting benefits to workers even if the industry from which they are displaced is protected by quotas—the worst form of protection.

Our Alternative Proposal

In our judgment, a superior adjustment program would make compensation, training, and relocation benefits available automatically to workers displaced from industries that the ITC determines to be suffering serious injury from imports. The program could also be used to aid workers displaced from industries currently protected by quotas, such as textiles and steel, provided that the quotas are replaced with self-liquidating tariffs.

The compensation component of our proposal would provide qualified displaced workers with two types of earnings-related payments: unemployment compensation and earnings insurance. Existing unemployment compensation programs, which currently compensate eligible unemployed workers for up to 26 weeks in virtually all states, would be left undisturbed. In addition, trade-displaced workers residing in regions of high unemployment, where alternative jobs may be less plentiful, would be eligible for an additional 26 weeks of unemployment compensation payments. Any qualified worker who chose to move in order to obtain new employment would be eligible for a relocation allowance.

Earnings insurance payments, in contrast, would be made to trade-displaced workers only *upon their accepting new employment*; payments would equal a fixed percentage of any erosion in earnings for a particular period of time. Thus, if the compensation ratio were 50 percent, a displaced worker from a designated industry who had earned $20,000 a year in wages (as reflected on the worker's previous tax returns) and had accepted a new job with a salary of $10,000 would receive, for a specified period, supplementary payments calculated from a base of $5,000 per year. The proportion of income replaced could decline over time and could reflect the age and experience of workers. (For example, more junior workers who have built up less human capital in their specific job skills might receive lower replacement rates.) Also, the total compensation payments made to any worker over a given period could be subject to a legislated ceiling.

This proposed earnings insurance mechanism, in conjunction with unemployment insurance, would represent a significant improvement upon current and proposed trade adjustment assistance programs. By providing extra compensation to workers after they find new employment, the proposal would give them an incentive to adjust. Rather than remain idle in the hope of reemployment with their old firms, workers could accept jobs paying lower wages (but offering new career opportunities, training programs, and chances to build up seniority).

A second component of our proposed program would aid workers who prefer to enroll in state-certified training programs. Training expenses would be financed by a combination of grants and loans. Repayment of loans would be made directly through workers' tax returns and would begin only after workers have surpassed their previous peak wage earnings, as reflected on earlier tax returns. The proportion of the retraining cost repaid would vary with the incremental earnings of workers. Workers who exceeded their previous earnings by a large percentage would be expected to repay a larger percentage of their training costs. Such contingent repayment loans — already in effect at some colleges — would allow the government to take equity positions in its citizens. Indeed, contingent repayment should be made a feature of other educational and training loan programs.

"By providing extra compensation to workers after they find new employment, the proposal would give them an incentive to adjust. Rather than remain idle in the hope of reemployment with their old firms, workers could accept jobs paying lower wages . . ."

Advantages of Our Industry and Worker Assistance Proposals: The Auto Industry as Case Study

The advantages of providing trade protection only in the form of tariffs and using the resulting revenues for trade adjustment assistance in the manner just outlined can be illustrated by examining what would have occurred if, from 1980 to 1984, such a program had been in effect instead of the Voluntary Restraint Agreement (VRA) regarding the export to the United States of Japanese automobiles.

According to the Department of Labor, between 1979 and January, 1984, 225,000 workers were displaced from the U.S. automobile industry. By January, 1984, two-thirds of these workers were reemployed, at median annual earnings some $4,000 per worker less than before. A tariff providing protection equivalent to that of the VRA would have easily funded a program to compensate for these earnings losses. According to Robert Crandall, whose analysis appeared in the *Review* earlier this year, the VRA increased the average price of Japanese cars by $1,000 in 1983. The tariff equivalent of this $1,000 per car increase would have yielded $1.85 billion in revenues. Such a sum not only would have funded full compensation for the annual income erosion of all reemployed auto workers (total cost $603 million), but also would have generated $16,000 for each remaining unemployed worker.

These calculations suggest that even a smaller auto tariff — one that would have provided some relief for American

consumers — would have been more than sufficient to fund our recommended assistance program. According to Crandall, the VRA raised U.S. automobile employment by 46,200. Assuming that a tariff set at half the equivalent level of the VRA would have yielded only a corresponding half increase in reemployment, 23,100 workers would have been displaced. However, with such a lower tariff, U.S. consumers would have saved at least $500 dollars per Japanese car purchased (and approximately $200 dollars for each American car purchased). The revenue raised ($925 million) would have sufficed to offset two-thirds of the income lost by displaced workers reemployed at lower wages (a total cost of $445 million) — and still yield $5,860 per unemployed worker for extended unemployment compensation, retraining, and other dislocation assistance.

The experience of the automobile industry over the past four years illustrates well the advantages of our proposal over trade quotas — particularly because that experience poses a severe test. For one thing, a large number of workers who were indirectly aided by the VRA would not have qualified for our program because they were not actually displaced by imports. For another, given their above-average wages, autoworkers as a group experience relatively large earnings losses. In more typical cases, in which more of the employment displacement would be due to imports and workers would suffer less erosion of earnings than auto workers did, the benefits of our plan could be even greater and the costs even lower.

Assisting Communities

A third major source of political pressure for protection is concern about the impacts of major plant closures on particular communities. Given the large fixed overhead costs of public facilities — schools, utilities, police and fire services — communities in which such closures occur are often forced to add the insult of additional taxes to the injury of an already shrinking populace. Although the concern about these effects has influenced the design of the trade adjustment assistance program, aid to impacted communities has been a virtually nonexistent part of the effort. In its absence, the only mechanism for helping these communities has been legislation adopted in a number of states requiring companies to provide notice in advance of plant closings.

We suggest that a new, positive approach be tried for assisting communities adversely affected by structural changes in the economy. Our proposal would not rely on general appropriations, because that route has proven to be a poor way to target regional assistance. In contrast to the relative success of the ITC procedures, which tie assistance to showings of trade-induced dislocations and confine aid to qualified industries, programs for aiding distressed regions — such as the Model Cities initiative and the work of the Economic Development Administration — have tended to expand beyond their original purposes.

Under our approach, communities would *voluntarily* choose to insure their tax bases against sudden erosion, rather than to depend on a government grant program. The tax base insurance program might, for example, allow a city experiencing an annual loss of more than 5 percent of its tax revenues for reasons other than rate reductions to recover from a government-administered insurance pool some proportion of that loss. The percentage threshold for tax base loss would vary by community size; a lower percentage loss would be required for larger cities. The pool would be financed through insurance premiums paid by communities that elect to join the program. Because the insurance coverage would extend to all sudden diminutions in a community's tax base, all types of communities, not just those experiencing steady long-term population erosions, would be encouraged to participate.

"Under our approach, communities would voluntarily *choose to insure their tax bases against sudden erosion, rather than to depend on a government grant program."*

It is possible, of course, to confine such a program to trade-related tax base losses. A mechanism similar to the Section 201 procedure now in effect for industries harmed by trade could be established to determine the causal role of trade in regional economic injury. However, given the voluntary and potentially self-financing nature of our tax base insurance plan, there is no reason in principle or practice why the program should be so restricted.

Conclusion

It is ironic that, despite its commitment to free trade ideals, the Reagan administration has resorted to more extensive quota protection than its recent predecessors. The irony is compounded by the administration's own macroeconomic policies, which stimulate pleas for protection, and by administration cutbacks of adjustment assistance programs that, if effectively designed, could allow a non-protectionist response. Given the current, dangerously protectionist environment, the programs outlined in this article could be an effective microeconomic adjustment strategy complementing the fiscal policy corrections that are required to place the U.S. economy on a path of sustainable growth without permanent protection.

Chairman GIBBONS. Thank you, sir. You made some interesting suggestions.

I was telling the staff we need some greater conferences so we can take advantage of these novel ideas you brought out.

The last time we had the escape clause up, I tried to get the Congress just to use tariffs. And I failed. I guess based upon that failure I have not tried to reinvent that problem again for myself.

But I am intrigued with your reasons. Maybe we can change this thing around and do that.

Mr. LITAN. Mr. Chairman, I have one comment that I think I raised in my prepared testimony, but not in my oral remarks. One of the reasons people object to tariffs in a regime of floating exchange rates is that exchange rate movements can wipe out the benefits of tariff protection in the course of maybe 2 or 3 months.

What the Congress may want to consider is to require that the level of any tariff granted under the escape clause be adjusted to reflect exchange rate changes. So, for example, if the dollar appreciated by 10 percent and you had a 10 percent tariff, that appreciation could conceivably wipe out the effect of the tariff. But what you could do every quarter or so is adjust the tariff rate for the exchange rate so that in real terms the industry would continue to get the same level of protection.

I think this will go a long way to meeting this worry about uncertainty.

Chairman GIBBONS. Mr. Bergsten, you are doing it again, and I am more intrigued than ever by your consistency to go to auctioning quotas. I think you have shot out all of the fears that I had in my mind about that. And I appreciate you doing that for me.

Do you know of any case where it would not be feasible or practical to sell quotas? Now, we have got a lot of quotas floating around now, agriculture quotas, I would like to bring them all into this. Maybe we can start auctioning off some of those monsters and all new ones have to come in to be auctioned off from the beginning.

Mr. BERGSTEN. Mr. Chairman, I cannot claim to have done an intensive study of each industry in terms of feasibility of auctioning off the quotas, but I do not see why not. We have a hodge-podge of techniques now and historically for handing out these quotas, but what is common is that they are given away. Even for the domestic interests who want protection and who have been granted protection in the past, it should be a matter of indifference as to whether the quotas are allocated or auctioned.

I have discussed that with a couple of the industries that are so protected, and obviously I will not speak for them, but I have not heard from them any strong objection to that.

Chairman GIBBONS. In order to try to focus this conversation and what we are trying to do here I am going to ask the staff to put in the next discussion draft when it comes forward the proposal that all quotas be auctioned, existing quotas give them a year to start auctioning them, new quotas immediately auction them. That is going to be in the next discussion draft that comes out. So if there are any at the table or any in the audience that want to comment on that, you better get your pencils sharpened because that is going to be in the next discussion draft.

Mr. Schulze.

Mr. SCHULZE. Mr. Chairman, I would like to thank both of our witnesses. They presented stimulating testimony. We will certainly consider and examine this with interest. And we appreciate the intellectual stimulation you have given us this morning.

Chairman GIBBONS. Mr. Frenzel.

Mr. FRENZEL. Thank you, Mr. Chairman.

I want to thank both of our witnesses for what I think is extraordinarily interesting testimony. And I want to simply inquire of Mr. Litan if he has got his address right. If I understand your testimony correctly, I think we ought to build an altar to you in every church in town. It is a splendid piece of work.

Mr. LITAN. Thank you very much.

Mr. FRENZEL. Tell me where you get your number of less than 5 percent of trade displaced workers. I would like to have the reference.

Mr. LITAN. These statistics are from the Department of Labor, from their employment training office.

Mr. FRENZEL. What year are we talking about?

Mr. LITAN. Actually we did this comparison for 1977 to 1981, and then also from 1982 to 1984. And the numbers I think vary between 4 and 7 percent. But this has been true——

Mr. FRENZEL. For both of those time periods?

Mr. LITAN. Actually the earlier time period I think was 7 percent and the later was 4 percent. The numbers are actually in the article that is attached to the testimony.

Mr. FRENZEL. OK.

Mr. LITAN. But there have been since 1981 a lot more workers running through the retraining programs than there were in the previous period. Because in 1981, at the urging of the administration, Congress tried to force more workers through the training program. And what happened was that even fewer came out at the end of the pipeline getting jobs for which they were entering retraining.

I believe that the whole system of compensating trade displaced workers by just giving them extended UI just is not the right way to go.

Mr. FRENZEL. Well, it is because of insurance that they stay unemployed.

Mr. LITAN. Yes. And we ought to pay them to go back to work.

Mr. FRENZEL. If you offer a high enough price for unemployment, you can get quite a lot of it. So for that reason what you call your earnings insurance, that is where you give some kind of a stipend to those who take the job that was worth less than the stipend? Right?

Mr. LITAN. Right.

Mr. FRENZEL. Because we are normally talking about a steel or auto worker, at least we have been in the past.

Mr. LITAN. Yes. Just to give——

Mr. FRENZEL. The thing that is wrong with your testimony is that it makes too much sense to ever get anyplace.

Chairman GIBBONS. You might be surprised.

Mr. FRENZEL. You know, I have been enraged at both unemployment compensation and TAA as being something that has not worked at all, the latter of course far more than the former. At

least in the former there is some termination until they get hold of the extension bills of FSB and other kinds of things.

But, you know, if it is true that we are getting less than 5 percent return for TAA, I only wish that Mr. Pease was here. I look forward to his questioning of your statement here.

I also am interested in your theory, which is not wholly in conflict with Fred's testimony, which at least indicates that tariffs are a better vehicle than quotas. You indicate that studying the—well, go over it for me again. You have got a table in here that you indicated there were 16 types of escape clause—I cannot find it in here.

Mr. LITAN. In other words, the number of times that we granted escape clause relief.

Mr. FRENZEL. Yes.

Mr. LITAN. I think that is table 2. We granted it 13 times since 1974 or 1975. About half of those have been tariffs and about half of them have been quantitative.

Mr. FRENZEL. OK. And in how many cases was the relief terminated?

Mr. LITAN. Well, actually the relief was terminated in every case, but it was renewed subsequently in the form of escape clause two times, and the third time was in the form of antidumping protection, which has nothing to do with the escape clause.

Mr. FRENZEL. Then we go to table 3, which you show the trade barriers the United States has erected outside of the normal trade statutes, either at the demand of a restless Congress or an administration usually holding Congress at bay through a deal like the present voluntary restraint agreements.

Mr. LITAN. Right.

Mr. FRENZEL. And they never end; do they?

Mr. LITAN. It does not look like it.

Mr. FRENZEL. Now, may I ask you, the chairman indicated that he is going to put some form of quota auction, a rather comprehensive form, in his draft for the committee's consideration in the future. Dr. Bergsten indicated that there were a number of objections to his quota thing, which he proceeded to work over.

Is it your opinion that quotas are either the best or a good way to deal with the problem? I took from your testimony that you thought tariffs were the first choice.

Mr. LITAN. Yes. Tariffs are my first choice. And I think they are Fred's first choice. Right?

Mr. FRENZEL. We will give him a chance later.

Mr. LITAN. OK. Certainly most economists would say tariffs are their first choice. If we have to go quotas, which are a second choice, I think we are both in agreement, for heaven's sake let us auction them and not give away all that money to the foreign producers, money which can be used, by the way, to strengthen their own industries to come back and compete with us which, is exactly what the VRA has done with Japanese autos. It is sheer insanity to do this in my opinion.

But I would prefer tariffs because of what I pointed out in my testimony. You are still restricting with a quota, even an auction quota, the volume of imports, and as the American market grows, you are insulating domestic producers from that marginal competition. And this is not a good thing. And tariffs do not do that.

Mr. FRENZEL. You are also putting money into a general revenue fund instead of putting it into a program that develops something less than 5 percent efficiency; is that correct?

Mr. LITAN. Well, I would prefer if we have tariffs or auction quotas to dedicate the revenues to the kind of adjustment plan I have talked about. If you have a dedication of the revenues, you would at least insulate the programs against political pressures to have it cut.

Mr. FRENZEL. I do not mind getting a suggestion for another trust fund from a good independent like yourself. But from an ex-Treasury official, I choke a little.

Fred, can we review some of your things. First of all, your testimony was directed wholly at auction quotas. And you did not build it up and say how tariffs compared or how they would fit into your program. Can you do that for us.

Mr. BERGSTEN. Yes. I am glad you give me that opportunity. I did at a couple of points in my statement indicate, but briefly, my preference also for tariffs. I would share the economists consensus in favor of tariffs.

I did, however, in my statement outline several practical problems with converting existing allocated quotas over to tariffs. I would make a distinction between new cases of import relief and existing cases of import relief. I would certainly take the view that in any new cases where relief is granted, the strong preference would be to do it with tariffs.

What, however, I pointed out in my statement was that if one wants to recognize our existing import relief, since there are something like 17 industries that now have one or another form of relief granted through quantitative means a shift to tariffs would at least in the first instance raise some practical problems.

One practical problem, of course, is the one that you have cited, the industries that are protected would scream that the foreigners could hurdle the tariff, and therefore the relief——

Mr. FRENZEL. Tariff protection you still have to work a little bit. Quota you do not have to work at all.

Mr. BERGSTEN. So there would be pressure from people that have had quantitative relief for 20 or 30 years to all of a sudden go to tariffs.

Second, we would face a GATT difficulty. When we raise tariffs under the GATT, we are required to negotiate that in the GATT under the article 28 procedure. Now I think that could be done. But I must tell you that when I have tried this proposal, retariffication or tariffying the world as it is sometimes called, on foreign officials, their sometimes reaction has been one of horror against raising the tariffs.

I immediately point out we are not raising the level of protection, but simply making it more transparent and all that. But there would be an issue there.

The third and most difficult practical problem, under existing restraint arrangements, is the basic most favored nation tariff rule under the GATT. As you know, our textile and import restraints, for example, exclude a very large number of suppliers, the Europeans and Canadians. We have got reverse discrimination. We hit the poorer countries and exempt the richer countries.

Mr. FRENZEL. Move your spindles from Ireland to Hong Kong and you have got an open shop.

Mr. BERGSTEN. If you go to a tariff approach, you are supposed to apply that tariff to all countries. Again, that might be a desirable thing to do, but it would be a big change in the program.

So there are some practical problem with existing restraint regimes. Those are the ones that generate these billions of dollars of scarcity rents that I am trying to capture and use for more progressive purposes. And I guess I am making some large bow to political reality, both domestic and international political reality, in saying a first step which would be a significant improvement—and Bob obviously agrees with that—is to move the quotas from allocation to auction.

But certainly, as a long-run proposition and for new cases, I prefer tariffs. But if you had pressures that generated a felt need for quotas, do it by auction not by allocation.

Mr. FRENZEL. As you went through your list of objections, the third item in the demolition derby was that we would get hooked on revenue, particularly for these good purposes that cause tears to come to the eyes of many of my colleagues. How do you avoid that? You have a nice program here that is developing quotas, paying out TAA to your constituents. How do you ever unhook a quota under those circumstances? You have just pointed out that TAA will be collected as long as it is offered.

Mr. BERGSTEN. I think the one word answer is attrition.

Mr. FRENZEL. You mean some of them will die?

Mr. BERGSTEN. Mr. Chairman, you have got to go to the basic objective of the adjustment scheme. Bob Litan talked about the 16 industries they have studied, we have looked at 31 cases. We do not find any phoenix stories, with the exception of bicycles. We looked at four other major industrial countries, and you do not find any phoenix stories there except maybe one in Germany. The name of the game is to humanely downsize the industry. That has got to be understood. You want to do it humanly.

Mr. FRENZEL. The more you downsize them, the more they offer that as evidence that they need more help.

Mr. BERGSTEN. Well, I think it depends on the way in which you do it. For example, one addition that we would suggest for using these revenues is early retirement. Add an early retirement option for workers in the shoe industry textile industry, who are very difficult to retrain and relocate to find new work.

One can doubt the political desirability of putting it that way, but the facts now are pretty irrefutable. That is what happens. You do not even have much delay, or reduce the cost of the payments by what we are doing now. We may have to get it done and over with in a more expeditious way.

I am suggesting that this could work if you have a more adequately financed program—and, I would add critically, an administration that wants to implement it in a sensible way. That is one reason you have got your 5-percent success rate, I do not think you have ever had an administration, myself included, which ever seriously tried to implement trade adjustment.

Chairman GIBBONS. I agree.

Mr. BERGSTEN. If you had those things, then I think you would have a much more rational basis for the downsizing of these industries over time. You would thereby phasedown the need to pay out the adjustment. Over time, the need for the import protection would also decline.

We would, however, set an inventory date. The date on which the protection was granted would be the cutoff point. Anybody who entered the industry, be it a firm or worker, after that date would do so at his peril. The people who are in would be helped to adjust or to phase down, but new entrants would be at their own risk. And that would limit the amount of difficulty you face and would deal with the problem by attrition.

Mr. FRENZEL. Would any of the Secretaries of the Treasury under which you served welcome the idea of the creation of the new trust fund?

Mr. BERGSTEN. The existing dogma in OMB and probably most Treasuries is against earmarking of funds. At the same time, we have them in a number of areas. They have had their uses historically. And in a case like this, where you are taking the revenue away from consumers to make them pay for protection, I think there is a very strong case for using those revenues in a way that will enable the protection to be phaseddown over time so the consumers do not have to keep paying.

Mr. FRENZEL. I do not disagree with that. All I am saying is we are in a time of Gramm-Rudman when each committee cannot get appropriations to entitlements. They cannot get entitlement to trust fund for user fees. It is the big game around here. And we have indulged in it as other committees do.

Mr. BERGSTEN. Note one important condition in this proposal. This proposal would generate its own new revenues. There would be no taking away of revenues that are currently existing. In one version of this proposal, frankly we had the idea of devoting not only revenues newly generated but using existing tariffs for adjustment in the industry itself. But that would take away from the existing general revenue.

When I call this scheme self-financing, it is literally that. It generates new revenues and then devotes them. You will generate much more revenue than you could possibly spend on trade adjustment, and you would thus be helping to reduce the budget deficit.

This proposal helps you deal with Gramm-Rudman and in fact gives this committee credit within the congressional system for making a positive gain. I do not know how you resist that.

Mr. FRENZEL. Somewhere in California Art Laffer is smiling as you speak. You have chased into the last refuge of scoundrels——

Chairman GIBBONS. Let me interrupt here. So that everyone will know, as soon as we finish with this panel, we are going to break for lunch. I know some of you have been waiting here very patiently, but I do not see how we can go constantly.

The old adage that your brain cannot solve anymore than your posterior can tolerate is about to take over. As soon as we finish with this panel, let us break an hour for lunch and then come back.

Mr. FRENZEL. Excuse me, Mr. Chairman.

Chairman GIBBONS. Excuse me.

Mr. FRENZEL. This business of bureaucratic nightmare, you have already indicated a preference for tariffs where it is possible. And you are talking about unavoidable quotas I guess. Our urge is to propel this foward. But there is a bureaucratic problem.

You talked about part of it in a country-by-country allocation. There is a problem with where you suggest the open auction; others would suggest protection of present people. There are other problems, Fred, that occur, and that would be in an industry where the producers control both the domestic production and a lot of the imports. I suspect that would be textiles and shoes and many others.

There are also situations where a large entity could, for purposes of market share, grab on to most of the auction ticket. This is a bureaucratic problem. How do you feel about some of those issues?

Mr. BERGSTEN. What I was referring to as a bureaucratic problem was an image of a huge number of Government personnel having to deal with it. You have raised a couple of substantive questions: Might there be collusion or monopoly power exercised in the marketplace for the auction tickets? That could occur, but I really do not think it could occur in the industries you mentioned: Textiles, apparel, and footwear.

As Bob Litan indicated, there are over 25,000 textile and apparel firms in this country. This is a competitive industry. It is also a competitive industry abroad. To the extent it is not competitive it is because we forced them to cartelize in order to carryout export restraints.

Mr. FRENZEL. There are some very large factors, however, in the textile industry. And if you do not like that, try footwear.

Mr. BERGSTEN. You mentioned that some firms are both producers and importers.

Mr. FRENZEL. True also in textiles.

Mr. BERGSTEN. But the key variable is whether there is competition at the selling end of the process. Because, remember, I indicated that retailers and importers along with producing firms, et cetera, would be able to compete.

We have an enormous number of retail outlets in this country for apparel and for footwear. Even just with the big firms, Sears, Penney's, K marts, et cetera, I observe fierce competition for the consumer dollar to sell shirts and blouses and suits. Those are the people who would be bidding for the tickets.

And it seems to me——

Mr. FRENZEL. Wait a minute. Who are the people who are going to be bidding for the tickets?

Mr. BERGSTEN. In principle, anybody.

Mr. FRENZEL. Who is doing the importing right now?

Mr. BERGSTEN. Retailers do a great deal of direct importing. There are importers who bring in large amounts.

Mr. FRENZEL. There are domestic producers who augment or supplement their line with imports.

Mr. BERGSTEN. Right. What I am saying is, when you add all those up, I think there are quite a large number of them in each of these industries we are talking about. At that point, simple economics comes to bear.

Sure, one retailer might try to corner the market for rayon suits and then charge the consumer a much higher price. But his retail competitor down the street is going to see that and come in and bid a dollar a suit more so he can have some of that market share.

Unless you have got a monopolistically structured industry, I guess I do not fear the problem you are mentioning too much. And I really do not think it is the case in any of these industries where we have large imports.

Mr. FRENZEL. Do you agree that somebody, Commerce or STR, is going to have to decide what units you will sell the import tickets? You are suggesting and the chairman is suggesting everybody is in. That means textiles. How many separate textile quotas do you suppose we have?

Mr. BERGSTEN. I think that is a serious issue.

Mr. FRENZEL. Ambassador Yeutter is coming out of the refuge and you are going into it.

Mr. BERGSTEN. It depends on how you carry out the auction system. You could at one extreme have an auction for imports of all apparel products. I think that probably would not be adequate, at least for a long time, because you have got a category-by-category system. But you could do a great deal of consolidation of the categories—now you have got a bureaucratic nightmare.

Mr. FRENZEL. We do. Quotas are a bureaucratic nightmare.

Mr. BERGSTEN. When the negotiators go out and talk to Hong Kong or Singapore or Korea, they are now getting as many as 30 or 40 or more categories that are allocated. At worst we are not talking about more categories. In fact, I would think under an auction quota system, you do some consolidation and reduce the number of categories.

I am not sure but what you would have some streamlining and some reduction in the bureaucratic nightmare from the system of almost item-by-item quotas that exist under a lot of restraint agreements now.

Mr. FRENZEL. In your first suggestion you did not suggest existing quotas—or did you—putting them under the auction system? I thought you were suggesting newly created ones.

Mr. BERGSTEN. What I said in my testimony was that you should auction any new restraints that were carried out through quantitative control. And that is, I think, in the discussion draft. But I was saying that in addition I would like to see a conversion of the existing quantitative restraints over to an auction system. That would be more complicated, as I have said, because of the history and the buildup of these restraint details.

But I am not sure but what you could actually reduce the complexity if you went to this kind of system.

Mr. FRENZEL. Well, it would mean of course revising the total number of——

Mr. BERGSTEN. Categories.

Mr. FRENZEL [continuing]. Quota categories that exist in the nightmarish arrangement that we now have.

Mr. BERGSTEN. Remember one other benefit too. If you go, at least in part at the outset, to auctioning off the men's shirt quota on a global basis instead of country by country for the 40-some countries that are now covered individually, you would have a lot

of simplification now. It is now not only by category, it is country by country, category by category.

If you want an administrative nightmare, look at what we have now. If you could even globalize the men's shirt quota, you have cut by a factor of 40 the complexity we have got today. The more we are talking about it the more I think there is simplification here.

Mr. FRENZEL. If we are going to globalize those, we are going to globalize the big three. I do not think we want to do that as a matter of external policy. I think we have got to worry about who winds up with these tickets in an auction system.

Mr. Chairman, I have overstayed my leave. I must say if you would get witnesses like these every day and run ads in the paper, we would have a full house, very interesting.

Chairman GIBBONS. I would agree with you on both those observations.

Mr. Pease.

Mr. PEASE. Thank you, Mr. Chairman.

I would like to thank our witnesses. Thanks to penetrating and lengthy questioning by our colleague from Minnesota I have had a chance to read the testimony from both of you. I would like to express my gratitude to the gentleman for affording me that opportunity.

Let me start out by asking a general question about tariffs versus quotas, which I guess I have never really understood. I would think—you both expressed a preference for tariffs rather than quotas. I would think from the point of view of an effective industry, quotas provide a certain amount of certainty. If the market is textiles, pairs of shoes, whatever, and the quota cuts it down by a fifth or whatever, you know that the market number of exports in the future is going to be x number. Whereas if you use tariffs instead, someone has to make the calculation that a tariff for x amount will tend to reduce imports by a wide amount.

Is that a particularly difficult calculation to make? Is there any real scientific basis for a calculation of that sort?

Mr. BERGSTEN. In theory there is a way to make the calculation precisely. And economists try to do it all the time. In practice it sometimes does not work out quite as anticipated. In fact, one of the virtues of shifting from allocated quotas to auction quotas would be to see where the market set the price of the scarcity rent.

I know Bob and his colleague Bob Lawrence at Brookings have suggested an auction quota as a way station en route to a tariff because then you get a market test of what the tariff should be. The New Zealand case is fascinating. As they moved over to auction quotas, their guesses turned out to be quite wrong on what the level of the quota auction price was going to be. They thought it would be much higher than it turned out to be.

The problem with this kind of economic calculation, like any kind of economic calculation, is that it does not do too well in handling dynamic changes. When you have a long period of controls of any type, all sorts of market distortions build up. And basically static models do not do a very good job of figuring out what the actual price should be. You have got to test it in the market.

That is one advantage of an auction quota. It tends to give you a test of what the real scarcity premium is. Then if you eventually want to move to a tariff, you have a much better test than frankly we or any other economists could calculate.

Mr. LITAN. Mr. Pease, you pointed out that one reason that domestic producers prefer quotas to tariffs is that quotas provide a greater degree of certainty. That is precisely the problem, at least from a consumer's point of view. Because by providing that certainty, you tell producers that as the American demand grows for their product and the products against which they compete, then above a certain ceiling foreign products cannot come into the United States.

That insulates totally the domestic industry from additional competition, once the quota ceilings have been hit. This is particularly dangerous where, as in the auto industry, you only have only a few domestic producers. As the American demand grows, well, this kind of insulation could promote tacit collusion, enhancing the imperfect competition that is already there. It can also discourage domestic firms from undertaking further cost cutting.

I do think think it is an accident, for example, that General Motors announced a 3-percent price increase just a couple of weeks ago. They did that because the Japanese voluntarily extended their VRA. And I do not think it is an accident Lee Iacocca has recently received a salary boast to $1½ million—this in an industry that has heavy import competition.

The best way to at least guarantee consumers that industries are going to respond to foreign competition is to at least put the form of protection in a tariff.

Now, one point that I made earlier—I do not think you were in the room then—but one problem or one contributing factor to this uncertainty that domestic producers commonly complain about is exchange rate fluctuations. They say if you give them a tariff at, say, 10 percent, that the 10 percent can be wiped out overnight by a dollar depreciation of 10 percent, which simply makes foreign goods cheaper by 10 percent.

One proposal to meet this problem, my colleague, Robert Lawrence, and I have suggested is that you could in implementing tariffs require that they be adjusted for exchange rates changes. If you have in the first quarter of the tariff regime 10 percent dollar appreciation, you can increase the nominal level of the tariff to compensate for that. That would remove a lot of the source of uncertainty generated by tariffs.

Mr. BERGSTEN. Let me just indicate for the record that I strongly disagree with that proposal. I want it on the record I dislike that proposal intensely.

Mr. PEASE. Well, Mr. Litan, your response stressing from the point of view of the consumer that you said makes sense. I am still troubled about the preference for tariffs rather than quotas, although I understand the problem with the quotas.

The object of section 201 is to help the industry provide some protection of the industry while it adjusts. It seems the me if you make a calculation, a tariff of a certain amount of money, certain percentage will help that industry in the calculation or the foreign competition either through subsidy or through increased efficiency,

or just pricing strategy, overcomes the tariff by decreasing the cost of the product as it leaves a foreign country, that you have subverted the process in section 201.

Granted the consumers will still be better off. But the industry will not be any better off at all. Am I missing something there?

Mr. LITAN. Well, the problem really is a question of how high to set the tariff to begin with. If you set it at a de minimis level, you are not going to protect the industry. But if you are setting a tariff as high as 20 to 30 percent, you are really penalizing foreign producers. It is inconceivable that they are going to swallow all 20 to 30 percent. They are going to have to raise their prices by at least some portion. And when they raise their prices, that will allow domestic producers to raise their prices. And that gives them at least some cushion in the long run for relief.

By going the quota route, you are discouraging that industry over the long run from talking vigorous steps to cut costs and to innovate because they are protected from extra competition as the American demand grows. And more importantly, you are sending all those revenues back to the foreign producers which they can use to build up their plants to better compete with American producers.

I cannot think of a worse way to help our auto industry than to give the Japanese an extra $2 billion a year to invest in their plants so they can kill American producers. It doesn't make any sense.

Mr. PEASE. I do not dispute your argument. I think that is a good idea. Would not the quotas have to be declining quotas also under section 201?

Mr. LITAN. Yes. If they are extended over 2 or 3 years, there is a requirement in the statute they decline. The protection better be declining over time because you do not want to permanently insulate domestic producers from foreign competition.

Mr. PEASE. Mr. Bergsten, you recommended on page 4 of your testimony the subcommittee should "build on the imaginative proposals in the committee's discussion draft." Specifically on page 5 you recommend revenues obtained from import relief should be utilized for greatly expanded training and relocation and other programs for the workers in the troubled industry.

You think that we should allow the use of these revenues for a adjustment assistance beyond that statutorily permitted by the current TAA program?

Mr. BERGSTEN. I think you could improve to some extent both the level of benefits and the extent of the relocation and retraining programs, for example, by using voucher systems and bringing in some other specific improvements in technique for the programs. But I do really think the fundamental problems that have created that very low success rate in the past are the two already mentioned, inadequate funding and failure to have an administration devoted to carrying out a successful program.

There are case studies, even in the last few years—the downriver project in Michigan, going back to the Studebaker plant in South Bend—example after example in the United States where, when a real effort was mobilized to help on the community level or at an industry level, effective adjustment has been promoted. But we

have never had a sustained program that tried to carry it out. And even when we have had flashes of effort in that direction, the funding has always been inadequate.

So I think if we put those two together with some improvement in techniques, you have a very good chance of getting that success ratio up.

Mr. PEASE. Well, I appreciate your saying that. I have said before at other hearings that the marvel is that the TAA training program has worked at all over the last several years. This administration has really been dedicated to making sure that it did not work during the early years. And prior to this administration too there was real evidence of maladministration. The local people who were to carry out the program never knew how much money they would have or when the money would arrive and what the rules or regulations were, and could not get any answers out of the Department of Labor.

And then, of course, beginning with the current administration, there was an effort by people at the top level to actually subvert the program. And I have also said before, and I will say it again, that I think the appointment of Bill Brock as Secretary of Labor was a very encouraging development, that we are likely to see an honest effort to administer the program that is on the books. And I am pretty hopeful that that will produce some good results.

Mr. Litan, let me back up. As you know I am a local champion of the TAA program. But I do not believe in fostering programs or continuing programs that cannot work and do not work. We have now extended TAA for 6 years. The President signed the bill 2 weeks ago. We are writing a trade bill over the next couple of weeks.

Do you think it's possible for you and your colleagues to come up with suggestions for improving on TAA in as short a time as the next 2 weeks? If so, I would be happy to try to work them into this trade bill.

Mr. LITAN. Most definitely. We have given this issue a lot of thought over the last 6 months or so. And we think that the most significant improvement that could be made in TAA, as I have outlined in my testimony, is to move away from giving compensation primarily in the form of extended UI, and move more towards compensating workers not when they lose earnings but when they get a new job. In other words, we should compensate trade-displaced workers for finding new jobs.

This program of earnings insurance would provide a strong positive encouraging signal for workers to find jobs as quickly as possible. It is my view that this is one of the most important things that could be done to improve the effectiveness of the TAA Program.

Mr. PEASE. Well, I do not think that you and I have much of a fundamental disagreement. I do happen to think that as part of the tradeoff for free trade if you will where the government consciously goes into policies that it knows will result in loss of jobs, that workers who lose their jobs because of imports are entitled to some additional consideration. But clearly I think most workers would rather have other jobs. If we can encourage them with some sort of a transition, then that is all the better.

I notice in your testimony that you say that workers in regions with especially high rates of unemployment still continue to receive extended UI for that period. Clearly if you have an unemployment rate of 15 for 20 percent, it does not do any good to encourage people to try to get lower-paying jobs.

Mr. LITAN. That is right.

Mr. PEASE. In the current legislation we did early on, when people start to collect TAA, they participate in job clubs and that sort of thing, so that they are fully aware of opportunity employment.

Well, I guess my invitation to you is to supply me if you can in the next week with specific language or suggested changes that you would make in the Trade Adjustment Assistance Program. And we will see what we can do about that.

Mr. LITAN. Is there someone on your staff that——

Mr. PEASE. Sitting right behind you. His name is Rick Samans.

Dr. Bergsten, could you enlighten me a little bit more about the experience in Australia and New Zealand with auctioned quotas? I think this is really one of the most innovative ideas that has come forward so far. And I think we ought to explore it just as far as we can and hopefully implement it in this legislation.

Mr. BERGSTEN. The Australian and New Zealand cases are quite interesting because these are countries that have had among the highest levels of protection in the world, at least among industrial countries or semiindustrial countries. Both of them in the late 1970's or early 1980's began a process of converting their import restrictions from quotas to tariffs. And they phased them in over a period of several years.

It has turned out that New Zealand has accelerated that pace in the last couple of years, is now going quite rapidly, and has now moved most of its import relief over to an auction quota system.

One interesting aspect is that they have done this as part of industry adjustment programs. They have done it for exactly the industries we are talking about—textiles, apparel and footwear—where they, like we, have had adjustment problems from competition from new suppliers.

Unlike we, they have done their trade relief in the context of overall adjustment strategies for the industry and have used the revenues coming in from the tendering, as they call it, for the quotas not in an earmarked way, but onto the general budget, which in turn however was also supporting adjustment in the industry in a substantial way. So, de facto, it was to some extent the same.

They have worked out a detailed tendering system, as they call it, for implementing the auction quotas. They have had no problems with the GATT in going through the conversions. Both of them have some specific historical situations that relate to that, but they have not had problems of that type.

I think their precedents indicate that it can be done and in fact is a rather promising method even in the most difficult cases—those where quantitative controls have been in place for a long time and have been allocated over a number of years.

Mr. PEASE. I see.

OK, if I can go back just for a moment to you, Mr. Litan, would you propose that the changes to be made in the adjustment assistance would be made only in relation to 201 relief or would be made generally available to anyone who is currently under the TAA program?

Mr. LITAN. Well, the proposal that I suggested is that displaced workers in industries that win affirmative 201 findings at the ITC, ought automatically to be eligible for TAA.

It is duplicative to send these same workers over to the Labor Department and go through another bureaucracy. One of the automatic entitlements for industries that even a 201 case should be that their workers ought to get some relief.

I would not eliminate the Labor Department's independent certification process, however, for those displaced workers who want to apply to the Labor Department outside of the 201 context.

Mr. PEASE. Let us say we have a factory that closes down because of import competition. It is eligible to apply for TAA, the factory workers do apply for TAA, and they get it. Would you think that those workers ought to be eligible for this insurance program, income insurance, and the other changes that you are proposing?

Mr. LITAN. In your hypothetical has the plant shutdown in major part because of imports?

Mr. PEASE. They have to go through the normal certification.

Mr. LITAN. Right. Absolutely, I would make the earnings insurance available for all trade-displaced workers, whether they go through the Labor Department or belong to industries that win at the ITC.

Mr. PEASE. Are you aware of the impact you are going to have on Congressman Frenzel when he finds out that you want to expand this program $50 million currently to $1 billion per year?

Mr. LITAN. Let me explain the billion dollar estimate.

Mr. FRENZEL. We may have to cancel those shrines.

Mr. LITAN. We want to raise the money from the vehicles that Fred is talking about. The billion dollar estimate, Congressman, was done under the most liberal outlay assumptions. And I can supply the details for those calculations.

But basically we assumed that roughly 300,000 workers a year were going to be eligible for earners insurance. We were liberal on purpose because we sort to reach an outside bound number.

To give you an idea of how liberal the 300,000 number is, in the peak year of TAA, which I think was in 1980, roughly 250,000 workers qualified for TAA. So 300,000 per year is an extreme upper bound. In my opinion, I think the number of workers eligible for earning insurance would actually be far less per year. So I give you 300,000 so that you have an idea of the worst case.

Mr. BERGSTEN. Could I just underline what I think both of us are proposing and try to keep Mr. Litan's shrines. You know who is financing these programs we are talking about: the Japanese auto companies and the Hong Kong quota brokers. Those are the people from whom we are extracting the revenue to help the American workers.

It is not a hit at that point on the budget. Just to underline what I said before, we are not taking away existing revenues from UI. We are generating new revenues and using some part of them for

this purpose and the rest for bringing down the budget deficit. This is a pro Gramm-Rudman proposal.

Mr. LITAN. Just to give you another illustration, take the auto VRA that started in 1981. If you would put a tariff equal to half the protective value of the VRA, you would have generated enough money every year to fund the entire TAA Program.

Mr. PEASE. OK. And part of your proposal, Mr. Litan, is to provide early retirement for older employees; is that right?

Mr. LITAN. Well, Fred has an early retirement program. We propose instead an earnings insurance program that would make proper allowances for older workers. Let us say we have an autoworker making $30,000, he becomes trade displaced and goes and accepts a new job at $20,000. So he loses $10,000 a year. We would make the compensation proportionate dependent on the worker's age and seniority.

So older workers may get 90 percent of their wage loss for 2 years, thus a $9,000 check, spread out quarterly, whereas the younger workers only 30 years old may get 35 percent. We did our numbers so that 50 percent would be the average compensation proportion. But we would make an allowance for older workers.

Mr. PEASE. Mr. Chairman, like Mr. Frenzel, I am highly impressed with this panel.

I appreciate the testimony of both of you. And I hope that you will supply me with specific language. I would be happy to have that.

Mr. LITAN. I will.

Chairman GIBBONS. And I would encourage Mr. Frenzel to do, as you have done in the past, to put it together. I am encouraged by the testimony here. I have asked the staff to work on this.

Mr. PEASE. Mr. Chairman, if I could just interject one word there. I would be happy to cooperate with Mr. Frenzel. I think $1,050 million, we can just sort of split the difference.

Mr. BERGSTEN. Do not sell out too fast.

Chairman GIBBONS. Mr. Crane.

Mr. CRANE. I want to congratulate both of these panelists too. I must confess I share the sentiments of my good friend from Minnesota on auctioning quotas though. Who pays scarcity rents, Fred?

Mr. BERGSTEN. The consumer is paying the scarcity rents right now. As long as you keep the quota in place, he is going to pay those. And the issue then is who derives the benefits from them and gets the receipt of those scarcity rents.

Mr. CRANE. And I appreciate your arguments about auctioning off those quotas, but who invented that term scarcity rents?

Mr. BERGSTEN. I should be a better economic historian.

Mr. CRANE. I figure it came out of your discipline.

Mr. BERGSTEN. It came out of the dismal science.

Mr. CRANE. A more accurate term would be scarcity taxes.

Mr. BERGSTEN. I accept that.

Mr. CRANE. And I really have trouble on two counts. One, since we can engage in euphemisms like that to confuse the public, and instead of reassuring everyone that the Congress wants to guarantee that this tax will continue, Congress historically has been able to hide behind euphemisms such as the absence of indexing or COLA's which is a convenient revenue raiser, would not the temp-

tation be for the politicians to take these scarcity rents and enhance them?

Mr. BERGSTEN. I am with you that the best thing would be to have none of these import restraints at all. That is the best path. Then we have tariffs, then the different quota routes. I am with you too in conjuring up a more captivating nomenclature to convey what really is happening here.

You are right, it is a scarcity tax. That is a good term. I would come back to the earlier discussion as to whether the politicians would in fact be more prone to hang on to these with the system I have in mind. One of the objectives of what I am suggesting is to make the whole business more transparent.

One of the problems I think that you members now face—and I certainly faced when I was in Government—is that the trade debate tends to be pretty one-sided. One hears an awful lot, and understandably so, from producer interests who are adversely affected by imports. What you do not get is much countervailing pressure from the consumers who pay those scarcity taxes. And one reason you do not get it is because they are not very aware of those taxes.

A tariff at least makes that information available. An auction quota might do even better. If the Treasury was auctioning off a shirt quota every quarter, and there was a headline in the Wall Street Journal or Journal of Commerce that says that Sears and Penney's and K-mart purchasing agents paid a 27-percent quota rent or scarcity tax to get the right to bring in shirts from Hong Kong next month, that would help publicize it to the consumer and might help move in the direction that I think you are pushing.

Mr. CRANE. The thing that concerns me is earmarking too. Because that frankly is rather a burden to the U.S. Government through a tax on consumers just like additional tariffs are. If you went into an auction like that, it would be targeted uses for which that money might be applied. I share Mr. Litan's concern about the efficacies of that Trade Adjustment Assistance Act even with some of the improvements that were in the budget reconciliation bill insisting that people could only qualify if they are in training programs and they are trying to get relocated.

But you can itemize the traditional arguments of: No. 1, there is particularly no basis for helping trade firms and workers more than firms and workers adversely affected by economic change. Do you agree with that?

Mr. BERGSTEN. At the philosophical level there is logic in the point. I think there are both a real and practical problem, however, with implementing it. The real problem is that trade policy does have a choice between freedom and restriction. And the reason the United States has basically chosen freedom is to benefit consumers and the economy as a whole. Somebody does pay a price for that—the firms and workers who are adversely affected by import flows.

Mr. CRANE. They are also consumers too.

Mr. BERGSTEN. And they get some offsetting benefit. But, net, at least in the short run they may lose. And there is a case to be made, when Government has a clear choice to restrict or be free, to obtain some of the benefits from the great mass who do benefit and

use those to help transit the adjustment of those who are adversely affected.

Here I know judgments differ, including within the committee, but I think that to maintain a basically open trade policy in this country, it has been helpful to have a trade adjustment program which gave Presidents and committees on trade an alternative between doing nothing or putting on import controls. It gives us a way to help domestic adjustment to the import penetration problems that are caused for certain industries at certain times.

If you eliminate the program, as has de facto been done in the last few years, then you really have a very polarized set of choices between import restriction, which obviously you do not like and I do not either, and doing nothing, which sometimes is maybe wrong economically and socially as well as politically.

So I would like to have that middle course. I would prefer to deal with all sources of dislocation in terms of transit our adjustment. But I think in the trade area, because it is a discretionary policy area, there is a particularly good case for having it.

Mr. CRANE. One of the concerns I have is people were theoretically trained to go back and find the same jobs that they had lost. And with the changes that are taking place in our economy as more and more service industry jobs surface, would it not be more practical to try and track those people into other forms of employment by giving the employer the incentive to hire and put into training programs displaced workers?

Mr. LITAN. In fact, let me comment on that. That is precisely the point of our earnings insurance program. That is to give the worker incentive, even if he has to take a lower paying job, at least to get back to work right away because he knows he is going to be compensated. The best form of retraining is to have another job. You can go through all kinds of retraining programs. But the best kind of retraining is on-the-job training, even if it is entry level.

And if the steel worker has to leave to go to an entry level job at some other place, let him work his way up, but at least give him the incentive to do that rather than sit and stay home and remain unemployed just to get a check.

Mr. CRANE. We had a meeting with Bill Brock, and he was highlighting that point last year, that TAA was a very unproductive program. By contrast, what you are suggesting would be the appropriate way to go.

I will not hold you any longer because I know Sam wants to take lunch and I have got an appointment downstairs. I thank you both for testifying.

Chairman GIBBONS. Thank you. Excellent, excellent testimony. We will try some of the programs.

Mr. BERGSTEN. Thank you.

Mr. LITAN. Thank you very much.

Chairman GIBBONS. Until 2 o'clock we are in recess.

[Whereupon, the subcommittee recessed at 1:05 p.m.]

AFTERNOON SESSION

Chairman GIBBONS. Could we come to order, please.

We have a panel of witnesses now consisting of Gary Horlick, Charles Verrill, Peter Suchman, and Peter Ehrenhaft.

Mr. Horlick, we will start with you.

STATEMENT OF GARY N. HORLICK, ESQ., O'MELVENY & MYERS, WASHINGTON, DC

Mr. HORLICK. Thank you, Mr. Chairman. Let me state at the outset these are my own views as will be obvious in a moment. My firm represents both foreign and domestic producers and I doubt any of them will agree with all of what I will be saying.

I take it that the purpose of the U.S. trade laws are to enhance the economic interest of the United States and not to look out for special interests in the United States. There is an exception to that that you can make for national security reasons, which could favor the foreign or domestic producer. We are supposed to be looking at the overall economic national interest of the United States—what makes us better. That sounds hopelessly naive, but perhaps idealistic is a better word. At a second level, what trade lawyers look at in this panoply of trade laws is fighting instruments for their clients. They are not looking out for the overall economic interests of the United States. They are looking out for their clients' interests, so you are not bound to get a national interest out of that.

Let me run through the trade laws rather quickly. Once you put in the cost-of-production mechanism, the antidumping law seems to make no sense economically. A lot of political scientists say the dumping law is necessary to take the pressure off of Congress, to give people an established procedure. If they follow the procedure, jump all the hurdles, et cetera, they win. The problem is it is bound to frustrate them. What you are measuring, the reason for filing antidumping cases, the reason people come to any of these four people here at the table and ask to file a dumping case, is that someone is selling something in the U.S. market for less than they are. People are bound to come away from a dumping petition frustrated because they didn't get what their problem is.

I would add if you are really looking at serious predatory pricing, you should look at a predatory pricing standard as you would at domestic pricing and make it the same law.

On the nonmarket economy issue, you are going to hear contradictory testimony from all of us, but I am absolutely convinced we have to change the way it is now. My personal preference, based on some experience, is to look at 406 and don't try to even measure dumping. As you pointed out, generations of people have been trying to do it and you can't do it.

Countervailing duty laws are kind of the opposite. You are never going to have a countervailing duty law which gets at every single distortion of the economy. The debate over targeting reflects that problem. The cash subsidies are easy, but how do you get at other distortions? One of the reasons you will never get at them, very candidly, is our Government does a lot of the same things. This is the tax-writing committee. I don't have to tell you about that.

There is an interesting recognition of that fact in Congressman Pease's bill looking at just what the United States does.

Section 301 is something well worth this committee's attention. Section 301, in my view, is a substitute for what should be an ongoing process wherein the U.S. Government is goaded and prodded by the Congress to continually look at what our trade priorities should be. Once you have a set of priorities, you go out and use whatever leverage you have. We are the biggest market and we have a lot of things people want. Use that leverage to get our priorities. It is just unrealistic to think we can get everything we want. No one ever does in a negotiation.

I am talking about a continuing process of identifying what we should be doing and getting it. I think Congress has helped enormously, frankly, by forcing the executive branch to go through some of that process. The national trade estimate is a step in that direction that you put in the 1984 act.

On section 337, the real problem is it takes 4 years to fight out a patent dispute in the U.S. courts and people are always looking for a faster way against imports and 337 is it.

There is a real good case for intellectual property but you can make the same case for having protected property within the United States also. You should not be able to get a remedy against a foreigner in 1½ years and have to wait 4½ years for a domestic remedy. I think that is something you must see a lot, where people are using the trade laws because they are frustrated by things in the domestic legal system.

Finally, section 201, as a number of previous witnesses pointed out, really is perhaps aiming at the real problem which is to have a humane downsizing, humane adjustment to changes in the economy. That has often been lost sight of in all this debate over trade and unfair trade. There is a need for adjustment assistance and a need for protection as long as it is temporary.

The earlier witnesses made a very good point that some industries get protection over the last 20 or 30 years, and some industries get it once. I think the goal should be to treat everyone the same. I would end on the question of fair and unfair trade. I am hesitant to call something unfair when foreigners do it and fair when we do it. That to me creates problems for the debate. This is true in the dumping law. It is true in some of the subsidy stuff.

The final note goes to small businesses and LDC's. I think everyone who has ever worked on cases or these laws sees it. We have created a very expensive, complicated litigation process which guarantees everybody their rights. With less money and fewer staff, you could do worse. It is the same in any system.

There is a lot to be said for what the administration told you this morning. They will go up and investigate. You don't have to have lawyers in that process. The same is true with the ITC. They will have a chance to tell you that. The problem is whether the Government as a whole is going to just tell complainants we will do the investigation but don't complain to us when you don't like the results.

That said, I really close on that note. If you are trying to measure fairness or unfairness, we have a system now depending on how much money the parties can throw into it, and that is just wrong.

Thank you.

[The prepared statement follows:]

STATEMENT OF GARY N. HORLICK, ESQ., O'MELVENY & MYERS, WASHINGTON, DC

1. Purpose of the U.S. Trade Laws: to advance the economic interest of the U.S.
2. Survey of U.S. Trade Laws:

(a) Antidumping law: a mechanism based on flawed economic principles for channeling, but often frustrating, people complaining about imports. If predatory pricing is the problem, apply economically sound predatory pricing laws which give fast relief and an effective deterrent.

(b) Countervailing duty law: a constant tension between the drive to countervail all foreign government action with any distortive effect, and the recognition that the U.S. government does the same sorts of things.

(c) Section 301: a substitute for an ongoing ctive, coherent trade policy machanism which would identify U.S. trade priorities based on the U.S. national economic interest, and use our leverage to achieve those priorities.

(d) Section 337: stronger protection for some intellectual property right owners than others. We should have effective protection for intellectual property no matter what the origin of the infringement.

(e) Section 201: the correct answer for changing industries—a temporary respite from foreign competition. No adjustment plan is needed, if the respite is perceived as temporary, rather than endlessly renewable, and if the "compensation"requirement operates to prevent the overall level of trade restrictions on U.S. exports from rising.

3. "Fair" and "Unfair" Trade:

Shouldn't the U.S. prevent "unfair" competition from any source?

4. Small Business and Developing Countries:

The U.S. trade laws—especially the antidumping and countervailing duty laws—have become extremely complex and expensive. Small businesses and poorer, less developed countries have a harder time coping with proceedings under those laws than bigger, richer companies and countries. If the goal is to measure "fairness" in trade, it should not depend on the wealth of the parties.

Chairman GIBBONS. Thank you, Mr. Horlick.
Mr. Verrill.

STATEMENT OF CHARLES OWEN VERRILL, JR., ESQ., WILEY & REIN, WASHINGTON, DC

Mr. VERRILL. Thank you, Mr. Chairman. I am Charles Verrill with the law firm of Wiley & Rein. Like Gary, I have participated in quite a large number of import relief proceedings on behalf of clients. However, my comments today are largely what I think personally should be done concerning the laws that apply currently to the nonmarket economies. I disagree on this point with Gary.

I have represented a number of domestic petitioners in cases involving nonmarket economies. My conviction after quite a number of these cases is this. I think the laws can be made to work. I don't think they are uniquely unpredictable or unfair, and I do not think that they are a failure as they have been currently administered.

Given these considerations, it is my view that what this committee should be doing is finding ways to refine the existing laws, and take one new initiative which I will get to later involving State trading and GATT, rather than searching for a uniquely ubiquitous remedy to take care of the nonmarket economies.

One of the reasons I feel this strongly is that our trade laws, the antidumping and countervailing duty laws in particular, reflect basic GATT obligations. Both the antidumping and countervailing duty codes which have been negotiated internationally, lay the groundwork for the kind of conduct which is and is not acceptable under the basic GATT agreement article, and which is addressed in the U.S. laws.

It seems to me, since we have laws and codes that seek to regulate international trade, that we ought to deal with nonmarket economies to the maximum extent possible within the context of those laws. The problem with a discrete, unique remedy for nonmarket economies is clearly that it would isolate those countries and deal with their trade outside the regular rules of GATT. To me, that is precisely the opposite of the desired result.

It is in this context that I urge the committee to consider three changes in the antidumping law that I think would be useful.

Before I describe those changes, let me emphasize that the virtue of the antidumping law is the fact that it directly addresses import pricing which, after all, is the principal reason why these disputes arise in the first place. It is when a nonmarket economy product is sold here at a price which is considered unfair that the domestic industry comes to Washington looking for some kind of import relief.

Quotas which are an alternative way of dealing with these products often exacerbate the pricing problem because foreign producers tend to view quotas as entitlements and will move the volume into this country to fulfill their annual entitlement whatever the price.

In contrast, the antidumping law directly provides price relief in the form of a tariff which you heard this morning is what economists prefer anyway and which is geared to the specific product involved, however inexact the pricing procedure. I would emphasize also that the price relief provided by the antidumping act is prospective. The antidumping law does not punish dumping prior to the filing of a petition. Only rarely does the antidumping law authorize any penalty against imports prior to the preliminary determination which is reached a number of months after the case is started.

It is in this context that I would propose to you three changes in the law which I think could help immeasurably in the administration and substance of the antidumping remedy as it applies to nonmarket economies.

Currently, as you heard this morning, the law is construed by the department to require a preference, in determining the fair value of the imported nonmarket economies product, for a surrogate price based on the price a market economy producer charges in its home market for the product like that which the nonmarket economy sends to the United States. That market price then becomes the fair value of the nonmarket country product and is compared to U.S. price to see if there is dumping.

There is a theoretical, I believe, appeal to this price-based methodology in the sense that it attempts to derive a fair value from the market valuation of a product in a market economy where pricing is determined by market forces.

The problem, as you heard this morning, is finding willing, cooperative surrogates in market economies who will provide the department with the data they need to make a fair value determination. One of the most frustrating things about handling these cases is the fact that the methodologies change constantly from the day you file until the final determination. It is not infrequent for the final determination to use a surrogate and a methodology that has

never even been argued or discussed in briefs of the parties in the investigation in the preceding 7 or 8 months. This lack of certainty is a real and specific problem in the administration of the law which I think contributes a lot to the belief that it is unworkable, unjustifiable, and probably unfair.

I will make a recommendation to remedy this procedural problem in a minute.

To go back to the surrogate problem, it seems to me the best way to handle the issue of fair value in the context of the difficulties that arise in finding surrogates is to make it clear to the department there are a variety of ways of determining fair value, under the law, none of which should be preferred. Two of these methods are the import price procedure and the factors of production approach that was initiated in 1977 at the insistence of Mr. Ehrenhaft which do not require surrogates. It is not necessary to locate a surrogate that will open its books to use those methodologies. I realize this proposal will expand the discretion of the department in any given case. One would think this might, indeed, complicate matters beyond comprehension.

I think this complication can be remedied, however, if the committee were to approve an early decision methodology in these antidumping proceedings that would require the department at the beginning of a case—within 10 or 45 days or whatever—to take all of the decisions on the method of computing fair value and the selection of surrogate and to stick with those decisions for the remainder of the investigation. That would enable investigations to move much more efficiently. It would allow the parties to seriously debate adjustments that have to be made and the like.

Indeed, I believe the early decision procedure would eliminate much of the uncertainty that people currently perceive in the law.

Finally, I would encourage the department to make expanded use of the settlement procedure that is currently in the law and which provides for suspension of investigations upon acceptance of price undertakings by importers. This is consistent with the GATT antidumping code which specifically encourages resolution of antidumping disputes by undertakings rather than final order.

At present, the department is a bit constrained in the application of this provision because of the limits on the kinds of price undertakings it can accept. I would expand that discretion to let the department have more freedom in finding a price that would eliminate the injurious effect and could be the basis for an undertaking by the offshore producer. I would leave intact the current limitation which requires the department to insure that any price accepted will not undercut or suppress domestic U.S. prices. Those measures, I think, would improve the antidumping law and its administration and I believe, if adopted, you would find fewer people complaining about its application.

I have one other suggestion for the committee which is unrelated to the antidumping law. An unexplored remedy in the trade law is GATT article XVII, which requires state trading enterprises in their selling activities, in their exports, for example, to act in accordance with commercial considerations. This obligation of article XVII has always been perceived as applying to the state enterprises of nonmarket economies such as British steel or the nation-

alized French companies, which raise many of the same policy questions as do state enterprises in nonmarket economies.

We have done a lot of research though and concluded that the framers of GATT intended from the outset that the state trading obligation should also apply to the nonmarket economies. It was the intention of the framers of GATT that the article XVII commercial obligation would deal with the various kinds of economic regimens in the various countries that are members of GATT and would ensure that state trading enterprises operate in ways which would not nullify general GATT obligations.

In my prepared statement, I have provided a very detailed background statement on the orgins of article XVII. I think the conclusion is inescapable that implementation of article XVII is a way in which one ought to be thinking about dealing with state trading and, in fact, in nonmarket economies in the future.

In closing, I would recommend, therefore, that this committee authorize the trade negotiators in the next GATT round to develop a code which would give substance to the commercial obligation of GATT article XVII and perhaps we could evolve a way dealing with nonmarket economies and state trading market economies that would be new and unique.

I would, second, ask the USTR to consider whether state trading that is not consistent with commercial considerations is an unreasonable act or policy under section 301 which can be addressed under current law.

That concludes my summary of my statement. I have a prepared statement which I have submitted for the record.

[The prepared statement follows:]

TESTIMONY BEFORE THE TRADE SUBCOMMITTEE
HOUSE WAYS AND MEANS COMMITTEE

Charles Owen Verrill, Jr.
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1776 K Street, N.W.
Washington, D.C. 20006

EXECUTIVE SUMMARY

The laws regulating nonmarket economy imports are not a failure, are not uniquely unpredictable, and are not unworkable. Such imports do pose complex questions of policy and administration of the trade remedy laws and for this very reason preclude a simple or ubiquitous solution. Since a goal of trade law should be to bring nonmarket economies into the discipline of the GATT, which is implemented by U.S. trade remedies including the antidumping and countervailing duty laws, the objective of this Committee should be to refine these laws in their application to the nonmarket economies rather than search for an all-embracing alternative which would, if enacted, only serve to isolate those countries from the GATT system.

Refinements that would accomplish this goal could include expanded options in determining the fair value of nonmarket economy imports in antidumping investigations that would reduce reliance on the need to locate willing and cooperative surrogates. This should be accompanied by a change in procedures to permit an early decision on the choice of surrogate and a method of calculating fair value so that the investigatory period can be devoted to serious and informed consideration of the issues. The potential for settlement of nonmarket economy dumping disputes pursuant to the existing suspension of investigation procedures should be encouraged. Since the major issue in such cases is the price of the imported product, the antidumping law, rather than sole reliance on quantitative (quota) restraints is most likely to lead to satisfactory results.

Predictability of results is difficult even in market economy cases but the prospective nature of the antidumping remedy alleviates unfairness. Dumping prior to the preliminary determination is not penalized. After provisional remedies are adopted, the settlement procedures can be utilized to rationalize the dispute and, in any event, after the investigation is concluded there is a defined less than fair value benchmark to guide pricing decisions.

GATT Article XVII, which requires state enterprises in both market and nonmarket economies to operate according to commercial considerations, should be implemented in multilateral negotiations and used as a guide for dispute resolution under Section 301. Finally, where nonmarket economies provide identifiable export (or even domestic) subsidies, the countervailing duty law should be applied.

TESTIMONY BEFORE THE TRADE SUBCOMMITTEE,
HOUSE WAYS AND MEANS COMMITTEE
APRIL 15, 1986

CHARLES OWEN VERRILL, JR.*

I am pleased to appear before the Committee today to offer views on proposed revisions in the trade laws that I believe would enhance their fairness and utility and to comment on a proposal to revamp Section 406 that I believe should not be adopted by this Committee. These comments generally concern the application of the United States trade laws to imports from nonmarket economies ("NME") and propose refinements to improve the procedural and substantive results. In many cases, these imports involve problems that are indistinguishable from those raised by state owned enterprises in market economies that trade in world markets without regard to commercial considerations. Therefore, I also propose implementation of GATT Article XVII as a means of dealing with state trading in all economies.

In my law practice, I have participated in a number of import relief proceedings involving both state enterprises and nonmarket economies, generally as counsel for United States interests. I am also adjunct professor of international trade law and regulation at Georgetown University Law Center. As a practitioner and adjunct professor I have heard, and myself expressed, criticism of the trade laws as

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they apply to the nonmarket economies and have examined numerous proposed alternatives. Many of these alternatives have been advanced in search of an "innovative," "simple" or "predictable" solution. In my judgment, however, these are the wrong objectives. Wrong because they are not achievable as a practical matter, which is demonstrated by the fact that so many proposals have been advanced but in the end abandoned or deferred, and also wrong because I am convinced the existing laws are, like democracy, better than any of the proposals I have analyzed.

For all of its deficiencies, the antidumping law directly addresses import pricing which is the principal domestic industry objection to nonmarket economy imports. It is a commercial fact of life that products from such countries are invariably sold at prices that are significantly below U.S. prices for the like product. This phenomenon occurs, in my judgment, because it is generally difficult to gain market share or consumer acceptance for any nonmarket economy product -- all else being equal -- without undercutting U.S. prices. Where such imports are injurious, the antidumping law provides a remedy that confronts this price issue head-on and strives to achieve a "fair-value" that once determined allows the nonmarket economy producer to sell without any quantitative restraint. And, because the remedy is prospective it does not punish pricing conduct prior to the initiation of proceedings.

This trade context is an overwhelming reason why the trade laws applicable to nonmarket economies must contain a price-based remedy. Quantitative restraints (quotas) do not address this issue except indirectly for the simple reason that quotas usually become entitlements and filling the quota becomes the objective whatever the price. This is illustrated by the fact that structural steel prices from the European Community declined dramatically (far faster than the dollar appreciation) after the EC countries agreed to limit the quantity of exports to the U.S. in 1982. In order to fill their annual entitlement, EC producers became price leaders apparently choosing to reduce price rather than the volume of shipments.[1] Nonmarket economy producers are even more likely to follow this pattern given the general perception of the quality of their goods.

This is also why an injury-only remedy, such as Section 406, is inadequate to deal -- in all cases -- with nonmarket economy imports. While increased tariffs are a possible mechanism for relief when the Section 406 criteria are satisfied (which has never happened), the natural and easier course is always a quantitative restraint. Moreover, an injury-only test will invariably involve entanglement in such

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1. The U.S.-Japan automobile quota is an obvious exception that can be readily explained by the customer preference for the quality of Japanese cars whatever the price. This is unlikely to be the case where a commodity -- such as steel -- is subject to restraint or when imports of a nonmarket economy product of any type is restrained by quotas.

esoteric issues as the meaning of "rapidly increasing" or the search for meaning in a causation requirement that is "midway" between "a" cause (the antidumping standard) and the "substantial" causation requirement of Section 201.

Section 406 also confronts the domestic petitioner with the unpredictable role of Presidential discretion which necessarily includes diplomatic and political considerations. This runs counter to the Congressional determination in 1979 to minimize the effect of these considerations in import relief proceedings. Congressman Vanik put the Congressional objective bluntly: "It is my hope that in the trade policies and actions of this Congress one of the things we do is take away these decisions from the silk hat crowd in the diplomatic department . . . ."[2] I believe Congress should stick to this objective rather than adopting an injury only remedy that in the end will always be influenced by the "diplomatic department."

In my opinion, therefore, the objective of this Committee should be to improve and enlarge the antidumping remedy as it applies to nonmarket economies by refining the fair value analysis, by enhancing the settlement of dispute process in the context of the existing suspension of investigation provisions, and over the longer term, by providing U.S.

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2. Cong. Record, July 10, 1979, at H 5551-5552; cited in Recent Developments in Countervailing Duty Law and Policy, a paper by Shannon Stock Shuman and Charles Owen Verrill, Jr., National Bureau of Economic Research Conference Report at 103 (1984).

trade negotiators with the authority to give meaning to the GATT Article XVII requirement that state enterprises operate according to commercial considerations.

My statement and the prepared testimony which I submit for the record examines the evident difficulties in the administration of the current trade laws that are applicable to nonmarket economy imports, as well as certain suggestions that have been made to improve or otherwise change those laws. Overall, my recommendation to this Committee is to avoid a search for a "creative" solution as a ubiquitous substitute for current law, but rather to explore -- and enact -- statutory refinements that will take a major step toward curing what are widely viewed as deficiencies.

I. THE ANTIDUMPING LAW SHOULD BE RETAINED BUT MODIFIED

The principal trade law remedy relied on to regulate the importation of goods into the United States from nonmarket economy countries[3] is the antidumping law. In these investigations, the International Trade Administration ("ITA") of the Department of Commerce ordinarily compares the U.S. import price of the nonmarket economy product with a "fair value" derived from the home market price of the same product

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3. The use of the phrase "nonmarket economy" is not intended to be pejorative: it describes these countries generally characterized as "state-controlled-economies" pursuant to Section 773(c) of the 1979 Trade Agreements Act, 19 U.S.C. § 1677b(c).

in a market economy surrogate. For example, in the seminal Polish golf car case, where I was counsel to the domestic producers, the "fair value" of the Polish imports was derived by calculating the home market price of golf cars manufactured in Canada. Because the Polish price on sales of golf cars to U.S. customers was lower than this "fair value," the Treasury made an affirmative finding of dumping, or sales at "less than fair value."[4]

Over the years, commentators have criticized the surrogate methodology as an unrealistic -- even arbitrary -- benchmark. Congress too has demonstrated impatience with the current practice. In recent years, considerable attention has been devoted to the proposal originated by Senator Heinz that would substitute an artificial pricing methodology based on the price of market economy imports of the "like" product into the United States. While this proposal has not been enacted due to disputes over the imports to be used in calculating the "artificial" price, the Department has in fact used import prices as the fair value referent where no suitable surrogate was available.[5]

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4. During a subsequent administrative review, Treasury abandoned the surrogate method and adopted the factors of production analysis described subsequently in these comments.

5. For example, in Carbon Steel Wire Rod from Poland, 49 Fed. Reg. 29,434 (1984), the fair value was derived from the U.S. import price of comparable wire rod imported from Australia. This information is readily available from Customs data and does not require cooperation from the Australian producer.

The question this Committee must address is whether the current law should be abandoned or whether there are changes that could cure the major deficiencies without creating new problems of policy and implementation. In my view, the current system of establishing a fair value for nonmarket imports is neither so inequitable or unpredictable that it should be abandoned. Instead, there are refinements in the fair value methodology and the investigatory procedures that will in my opinion enhance the predictability of decisions and contribute to a rational resolution of these disputes which almost invariably arise because of the inevitable likelihood of sales of nonmarket economy products at market disrupting prices.

A. Foreign Market Value

Section 773(c) currently provides that fair value in nonmarket economy investigations shall be determined by either: "(1) the prices . . . at which such or similar merchandise of a non-State-controlled-economy country . . . is sold either (A) for consumption in the home market of that country or countries, or (B) to other countries, including the United States, or (2) the constructed value of such or similar merchandise in a non-State-controlled-economy country or countries . . . ."[6] The Department interprets section 773(c) to require that first preference be given to the price

6. 19 U.S.C. § 1677b(c).

of the "like product" charged in a market economy country as the surrogate or benchmark.[7] Alternatively, the Department looks to prices charged in sales from a market economy to third countries. The third methodology, seldom utilized but nevertheless available, is to construct the value of the like product when manufactured by a producer in a surrogate country.

These referents have one failing in common: they each require the identification and cooperation of a surrogate producer in the market economy country selected. This complicates the process of developing fair value because much of the time the Department has available to conduct investigations is consumed in the search for the surrogate. Cooperation is often difficult to obtain because market economy producers are often unwilling to open their books to the Department's investigators and indeed run the risk that their own sales to the U.S. will be the subject of an antidumping investigation, which happened to a Finnish producer that agreed to be a surrogate. For these and other reasons, surrogates are often found only at the last moment, frequently after the preliminary determination, with the result that none of the participants in the investigation have an adequate opportunity for advocacy and the final determination is a surprise to everybody.

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7. See 19 C.F.R. § 353.8.

It has become increasingly apparent to me that the search for willing and cooperative surrogates has become so cumbersome that it is time to abandon the surrogate price as the preferred reference despite the theoretical appeal of a market-selling-price-based methodology. Instead, I urge the Committee to make it clear that surrogate prices are but one of several alternative benchmarks for determining fair value. Alternative valuation methodologies would provide the flexibility needed to deal with the variety of factual situations these investigations necessarily involve. If this proposal is coupled with an "early decision" procedure that I describe later in these comments, much of the uncertainty and unpredictability of fair value determinations could be eliminated.

One alternative valuation method is the proposal advanced by Senator Heinz years ago and considered by this Committee last year to base fair value on import prices into the United States of the like product from market economies. This idea has merit, albeit not as the sole solution, and in fact, is occasionally utilized by the Department under existing law. Import prices should not, however, be the only reference available to the Department. Too often, import prices of a specific product are difficult, if not impossible to derive from customs statistics because of the mix of products, and the consequent varying prices, that occur in

most TSUS items.[8] The ambiguity of generally available statistical data on import prices is especially pronounced where the product from the nonmarket economy is not fungible with the products imported from market economies. In these circumstances, numerous adjustments are necessary to achieve comparability which, of course, significantly impairs the utility of publicly available data as a harbinger of fair value.

For these reasons, I recommend that the Committee clarify that import prices may be used as the benchmark but only as one of the alternatives available for consideration. However, I would not restrict the Department to a "lowest import price" or to the import price less some percentage.[9] These arbitrary constraints would unnecessarily inhibit the Department's determination of an appropriate benchmark. Instead, the import price or even a basket of import prices should be an available alternative where there is a convincing showing that the imported products are like those under investigation and, in the circumstances of a specific investigation, are an appropriate benchmark.

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8. For example, TSUS 607.17 includes wire rods of various chemistry and quality with selling prices that range from $200 per ton to as much as $900 per ton. Since the entries from any country will almost always involve a mix of these products, the average Customs value is not a reliable guide to the import price of a given grade or type of wire rod.

9. Another recent proposal would base fair value on the U.S. price less a percentage. This would be questionable trade policy and difficult to administer since transaction prices are often closely held information.

Secondly, the Committee should endorse the factors of production methodology adopted by the Treasury in regulations developed as a consequence of reference problems that arose in the Polish Golf Car case. There, after the Canadian producer discontinued production, the Department was faced with calculating fair value based on U.S. prices because golf cars were not produced in any market economy country, thus ruling out surrogate prices or constructed value as benchmarks.[10] To resolve this problem, Treasury calculated the fair value by pricing Polish labor and material inputs in a market economy.

While I objected to this methodology at the time, I am now convinced that in appropriate circumstances the factors of production approach has merit. In applying this methodology, the Department determines the hours of labor utilized in producing the product in the nonmarket economy, the number of electrical units utilized, the amount of raw material employed, etc., and values those "factors of production" in a market economy. Because labor costs, electric rates and material costs can be determined from publicly available data, cooperation by a surrogate producer in the market economy is not necessary thus eliminating a major difficulty in present procedures. This infrequently used methodology, with certain amendments, is a rational alternative method of deriving a fair value particularly where the product involved

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10. For a vivid statement of the problem, see Annex A.

has unique physical characteristics. A Polish golf car, for example, is likely to be sufficiently different from those produced in other countries that numerous adjustments will be required if the home market price of a golf car produced in Spain is used as the surrogate.

To be viable, however, the factors of production method should be modified to require the Department to take into account the cost of capital and depreciation. These costs are not currently considered in computing fair value in factors of production analysis except under the general expenses category. This limitation is unrealistic since capital and depreciation are real costs that can easily be derived from market economy equity rates of return and the useful life of plant and equipment. Moreover, the factor values do not need to be calculated in only one country. Why not value labor in one country and materials in another?

In summary, the law should authorize the Department to examine a variety of criteria in determining the fair value of nonmarket economy imports. These could include: (i) market economy prices or constructed value where a cooperative surrogate is available, (ii) import (i.e., artificial) prices if sufficiently discrete to permit a rational reference price without unduly complex adjustments, or (iii) the factors of production, amended to include costs of capital, where the available information in a specific product investigation permit such valuation. Further the law should specify that

the Department is to make a determination in each case based on the unique characteristics of the product under investigation without any institutional policy preference for one of these methodologies.

I recognize that removal of the preference for prices in market economies as a valuation criteria would increase the Department's discretion, but this is precisely why an "administering authority" is needed to deal with the infinite variety of fact situations that are likely to occur and which defy a universal or predictable solution. Moreover, dealing with the parameters of this complexity early in an investigation would cure the uncertainty under current law where the selection of a surrogate or even the methodology to be utilized is often not made until late in the proceeding.[11] I suggest that the Department be required to establish procedures at the outset of an investigation which would identify the surrogate and fair value procedure to be utilized. For example, procedures could be adopted that would require the petitioner to identify in the petition a proposed fair value criteria and state the reasons why that criteria is preferred. During the initial forty-five day period after filing the petition, the parties to the investigation would brief the issues, inquiries would be made about possible

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11. This uncertainty is even more pronounced under Section 406 when proof of the statutory elements still leaves the parties in the dark about the outcome pending the President's decision.

surrogates by the Department and a decision could be reached on methodology from the choices available (surrogate or import prices, constructed value or factors of production).

The objections to this "early decision" procedure are likely to be practical. The Department will surely question whether surrogates can be located, or cooperation secured, in forty-five days. Questions concerning the product characteristics and production methods will be difficult to resolve in this period. I am convinced, however, that these problems are surmountable. If petitioners know they will be held to the early decision, prefiling practice will be relied on to parse out many of the problems likely to arise. In fact, the Department could adopt an "intention to file" procedure that would permit review of alternatives, with participation by counsel for the nonmarket economy producer, prior to the formal filing of a petition and initiation of an investigation. Informal pre-filing consultation with the Department is now routine and there is no legal objection that I can see to a more formal procedure. The adoption of an "early decision" would provide the parties -- petitioner and the foreign producer -- with a far more realistic opportunity to debate the issues during the investigation without concern that a change in methodology or surrogate late in the investigation will lead to unexpected results.

These proposals will not satisfy those who long for a "predictable" pricing methodology that will serve as a guide

to nonmarket economy producers that seek to enter the U.S. markets. However, I urge this Committee not to be swayed by "predictability" arguments. While there is a certain appeal to predictability as a policy goal, I believe the arguments based on this notion fail to take into account the commercial realities of import pricing or the fact that even market economy exporters can never predict with certainty what would be the result of a dumping investigation of sales to the United States.

First of all, the only predictably "safe" price for an imported product from any economy is one that equals or exceeds U.S. prices which, of course, will rarely result in any market success. Commercial realities usually dictate that imported products be sold below domestic prices for comparable products in order to overcome customer preference for the U.S. products. This preference is not merely patriotic: service, warranties, just-in-time inventory requirements, and direct customer relationships all contribute. Therefore, the primary consideration in pricing imported products is the identification of a price sufficiently below the U.S. price to induce customer acceptance. If the price selected is below home market prices in the producing country, there is the risk of dumping charges. However, I doubt this is a prime consideration in the price setting decision. There are simply too many variables in the Department's calculation of fair value and U.S. price. Moreover, the multi-

tude of adjustments in the fair value determination defy assurance that the price charged will not be challenged.

This is the same choice a nonmarket economy producer must make in setting U.S. prices. Of paramount importance is the selection of a price that will result in sales. If that price is below those charged by U.S. producers, there is always the risk of antidumping charges with the attendant uncertainty of result. But the risk is not entirely or hopelessly unassessable. Even under current practice, the risk can be evaluated by comparing the price to be charged with prices in other countries. In today's commerce, I find it hard to believe that a nonmarket economy producer could not get some idea of prevailing prices for a product in sales around the world and from that be able to assess the risk of antidumping charges being brought on sales to the Untied States.

That this choice is faced every day by market economy and nonmarket economy producers alike is evident from the fact that the antidumping law is one of the most utilized trade remedies. Moreover, it is important to bear in mind that antidumping remedies are prospective: dumping prior to initiation of an investigation is not penalized.[12] The filing of a petition serves to put the foreign producer on

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12. The 1916 Antidumping Act -- which does penalize pricing conduct after the sale is made -- is not a realistic threat given the failure of any plaintiff to recover damages in the seventy years since enactment.

notice that there is a question about the pricing utilized, but no remedial action is taken until the preliminary determination which occurs a number of months later (in rare circumstances it is retroactive ninety days) which is certainly adequate time to adjust pricing or discontinue shipments to the United States. While it is true that a dumping finding establishes a margin based on sales prior to the initiation of the investigation, the duty deposited is merely an estimate that is subsequently modified to reflect the actual differences between the fair value and the selling price at the time of sale. If the selling price is adjusted to fair value after the preliminary determination, there is no liability for dumping duties and estimated deposits are returned with interest.

Moreover, the Department has authority under Section 736(c)[13] to adjust the estimated margin during the ninety day period after the final determination if there is evidence that there has been a change in pricing to the "fair value." While this procedure has been only rarely utilized, it nevertheless provides a means for avoiding the adverse consequences of a final less than fair value determination. This procedure has languished largely because it fails to provide assurance that the adjustments after the preliminary determination are permanent. This is a legitimate concern but the fact remains that in a proper case a nonmarket economy

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13. 19 U.S.C. § 1673e(c).

producer can ameliorate the impact of an antidumping finding by adjustment of prices to the fair value.

The predictability argument is, therefore, a makeweight that ignores both the prospective nature of the antidumping remedy and the opportunities to adjust prices to offset any adverse consequences of a final less than fair value determination that are already available. Moreover, it ignores the commercial pricing environment in which import sales are made. And, of course, even where there is a finding of less than fair value selling, a remedy is only imposed when the dumped imports are found to be a cause of injury to the domestic industry.

B. The Expanded Use of Settlement Procedures Would Enhance the Current Law

Current law provides an opportunity to settle antidumping investigations that is uniquely suited to resolution of nonmarket economy import trade disputes.[14] The potential for "settlement" of antidumping investigations with a minimum of rhetorical emphasis on trade theory is illustrated by the use of the statutory suspension procedures to resolve a 1981 antidumping investigation involving trailer axles from Hungary in which I was counsel for the domestic petitioner. The investigation was initiated after Rockwell International

14. The comments in this section are elaborated in a paper I gave at Interface V, an International Law Institute Conference held in Pecs, Hungary, April 24-25, 1985, and soon to be published in the Conference Proceedings.

Corporation alleged in an antidumping petition that Hungarian trailer axles were being sold at less than fair value and were a cause of injury to the domestic trailer axle industry.[15] Following the usual surrogate methodology, Rockwell argued that the benchmark or fair value of the Hungarian trailer axle should be the home market selling price of a comparable axle made in either Canada or the United Kingdom. Early in the proceeding, however, the Department chose an Italian producer as the surrogate.[16]

The ITA preliminary determination concluded that the U.S. price of the Hungarian axle was substantially below the adjusted Italian home market price resulting in a less than fair value margin of 68.1 percent.[17] After this decision was announced, counsel for the Hungarian producer initiated discussions with the objective of a "suspension of the investigation," under the antidumping "settlement" procedures that had been adopted in the 1979 Trade Agreements Act.[18] These procedures contemplate that the investigation may be sus-

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15. Truck Trailer Axle-and-Brake Assemblies from the Hungarian People's Republic (ITA Initiation Notice), 46 Fed. Reg. 46,152 (1981). Trailer axles are the passive axles on tractor-trailer combinations.

16. This early selection of a methodology and surrogate greatly enhanced the advocacy possibilities for both parties and opened the way for serious and informed debate on adjustments for differences in products and production processes.

17. 46 Fed. Reg. at 46,154.

18. See Section 734 of the 1979 Trade Agreements Act, 19 U.S.C. § 1673c. The implementing regulations are in 19 C.F.R. § 353.42.

pended after the preliminary determination where the foreign producer agrees to offset completely the antidumping margin, or to cease imports or (in special cases) to reduce the margin by an amount sufficient to offset the injury.[19] Rather elaborate consultations are required in order to ensure U.S. industry participation in the process while at the same time limiting negotiations to direct contact between the U.S. government and the foreign producer.[20]

In the Trailer Axles investigation, the Hungarian producer offered to adjust prices upward to the "fair value" which was based on the Italian home market price. Accepting this proposal, ITA "suspended the investigation," finding that the agreement was in the public interest.[21] While the Hungarian producer could have subsequently requested an injury finding[22] and the domestic petitioner had the option of an appeal to the Court of International Trade, neither party took such action. Since the suspension became effective in the fall of 1981, the Hungarian producer has con-

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19. Section 734(c), 19 U.S.C. § 1673c(c).

20. Section 734(e), 19 U.S.C. § 1673c(e). Absent U.S. government participation as the negotiating intermediary, there would be a clear risk of violation of the antitrust laws if a U.S. producer agreed on a price adjustment with a foreign competitor.

21. The Agreement is attached as Annex B.

22. Section 734(g), 19 U.S.C. § 1673c(g). A negative injury finding would void the agreement and terminate the investigation which critics describe as a "second bite of the apple" and which tends to foster a hostile petitioner attitude toward suspensions.

tinued to file quarterly compliance reports which are monitored by the Department thus ensuring compliance with the pricing commitment made in the agreement.

The suspension of the Trailer Axle investigation illustrates a settlement that specifically addressed the price issue raised by the introduction of Hungarian trailer axles into this market. Having adjusted prices to the "fair value," the Hungarian exporter was free to sell axles without quantitative restraint and has in fact continued to ship substantial volumes. While this was a unique result under U.S. procedures, the "resolution" method has been extensively utilized in the European Community pursuant to the EC Antidumping regulations.[23] These resolutions are consistent with the GATT Antidumping Code and, perhaps more important, with modifications could be an even more effective procedure under U.S. law.

Article 7 ("Price Undertakings") of the Antidumping Code 105[24] provides for suspension of investigations without imposition of antidumping duties

> upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is elimi-

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23. EEC Council Regulation No. 2176/84, Art. 10 (1984).

24. This Code is entitled: "The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to Antidumping Measures)." The Code was approved by Congress in the 1979 Trade Agreements Act. See 19 U.S.C. § 2503(c)(6).

> nated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping.25

This paragraph is almost -- but not quite -- cloned in the U.S. antidumping law which requires either complete cessation of imports, elimination of the margin by price increase, or reduction of the margin to eliminate injurious effects subject, however, to a very precise limit on the margin by which selling prices are permitted below fair value.[26]

The utility of the suspension procedures in U.S. practice is probably limited (inhibited?) by the one substantive difference between U.S. law and the Code. U.S. law, as mentioned above, severely limits the price undertaking to those that eliminate the margin of dumping or to those undertakings that (i) prevent price undercutting and (ii) set prices at levels near the "fair value."[27] This latter limitation was the inevitable consequence of concern in Congress that accepting the Article 7, Paragraph 1 proscription (i.e., undertakings that eliminate the injurious effect

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25. Antidumping Code, Article 7, paragraph 1.

26. Section 734(c)(B), 19 U.S.C. § 1673c(c)(B), provides that the price adjustment must (i) prevent price undercutting or suppression and (ii) "for each entry for each exporter the amount by which the estimated foreign market value exceeds the United States price will not exceed 15 percent of the weighted average amount by which the estimated foreign market value exceeded the United States price for all less-than-fair-value entries of the exporter examined during the course of the investigation."

27. See Section 734(c)(B), 19 U.S.C. § 1673c(c)(B), quoted in note 26, supra.

of dumping) would give the administering authority too much discretion in agreeing to a price that eliminates injurious effect.

In my judgment, U.S. law should be revised to reflect more concisely the Article 7, Paragraph 1 obligation. An amended U.S. law would allow far more latitude in establishing an appropriate price level that would eliminate the injurious effect of dumping, thus enhancing the resolution of disputes, than is now the case. While this would enlarge the Department's discretion, the law now requires that there must be assurance that the price adopted will not lead to price undercutting or supression of U.S. prices which is a far more important protection than the mechanistic limitation based on a percentage of the fair value margin. The additional challenge created by an amendment that would promote settlements based on price adjustments that remove injurious effect, of course, would be to find the "right" price level that will eliminate such effects without running afoul of the U.S. antitrust law. This presumably would not be a problem if the ITA role is preserved or even enhanced to insure that the price setting exercise is not a private party price negotiation in mufti.

The conclusion that U.S. law could be revised to enhance settlement of nonmarket economy antidumping investigations seems compelling.[28] Preservation of the "fair value" proce-

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28. The settlement procedures should also contain the option
(footnote continued)

dure in Section 734 as the predicate to settlement is necessary to establish the environment in which a negotiation can take place, but a greater degree of flexibility in ascertaining the level of import prices that would eliminate injurious effects would encourage petitioners and exporters because it would reduce the uncertainty that surrounds the surrogate procedure when carried to its conclusion. Of course, that procedure would remain available as an alternative when the parties to an investigation are unwilling or unable to utilize the suspension procedures.

C. Adoption of The Proposal to Utilize A Warmed Over Section 406 In Lieu of Antidumping Procedures Would not Be Good Policy

The Chamber of Commerce has circulated a proposal that argues that repeal of the antidumping law as it applies to nonmarket economies is necessary because the current law has "created tremendous confusion on the part of government regulators, importers and domestic industry alike." In my view, this characterization overstates the case for reform. I am not convinced that the current system of setting a fair value for nonmarket economy imports is so inequitable and unpredictable that the remedy should be abandoned. Indeed, as I have argued in these comments, a reformed fair value

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(footnote continued from previous page)
to utilize quantitative restraints in those situations where a quota would achieve an equitable result.

methodology, "early decision" procedures and enhanced use of suspension agreements would best address the key issue, which is pricing.

While I recognize that this system may not lead to an ideal solution in every case, I am convinced that these established procedures should not be abandoned for a refined injury only methodology. Section 406 has been a dismal failure since enactment twelve years ago. The changes now recommended in the Section 406 procedure and requirements -- while interesting -- do not give me any confidence that the amended remedy would be any more likely to effectively deal with nonmarket economy imports than has been the case in the past. The concepts proposed are untested and could lead to even more uncertainty and lack of predictability than at present.

Under the proposal, the injury threshold would be "set midway between current provisions . . . ." I believe this standard will itself be unpredictable since it suggests that the nonmarket economy imports would have to be more than "a" cause but less than "a cause as important as" all other causes. How to objectively measure this level of injury and causation seems likely to evade detection pending extensive litigation at the Commission and subsequent review by the Court of International Trade. The risk here, of course, is that the endless debate over the meaning of "rapidly increasing" in current Section 406 would be replicated as the Com-

mission attempts to refine a new standard of injury and causation "midway" between the antidumping/countervailing duty standard and that applicable in escape clause investigations.

The Chamber proposal also contemplates negotiations to resolve the dispute. However, I fail to see what would motivate the nonmarket economy representatives to negotiate if revised Section 406 were the only available remedy. Should negotiations fail, would the USTR have authority unilaterally to impose a remedy? If so, would the President have discretion to revoke the unilateral remedy? What would happen if the ITC were to reject the USTR imposed/negotiated remedy as inadequate? Would nonmarket economy countries seriously negotiate if the result were appealable to the President? These questions in fact point to the inescapable conclusion that negotiations are likely to be successful only where the alternative is a more stringent restraint than can be archived in a settlement. This is presently the case under the antidumping suspension procedures, where the alternative is a final dumping finding, but there is no such incentive in the proposed revision of Section 406.

I recognize that the current bilateral steel arrangements with about eighteen countries and the EC have been posited as an illustration of why the proposed Section 406 revision would work. However, having had considerable experience with the negotiation of those arrangements, I can

assure the Committee that the ultimate inducement to negotiate in every case was an existing or imminent antidumping or countervailing duty order. The withdrawal of petitions or the termination of orders was the only credible bargaining chip that brought the exporting countries to the bargaining table.

Moreover, because of ultimate Presidential discretion over the result in the proposed Section 406, one can readily predict recurrence of the topsy-turvy results in a famous Section 406 case involving ammonia from the Soviet Union.[29] There, the ITC found injury to the domestic industry by a three to two vote. The President rejected the recommendation presumably because of domestic political considerations. (The Executive Order found that imports of low priced fertilizer were "critical" for domestic farmers.) A month later, however, the Soviets invaded Afghanistan and President Carter, seeking a means of taking action to demonstrate displeasure, tentatively adopted the recommendation of the ITC as a temporary measure and requested the ITC to make another finding of injury which would be necessary to full implementation of the restraints. However, this time the ITC, following a change in Commissioners, voted three to two that there was no evidence of injury under Section 406 even though

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29. Anhydrous Ammonia from the U.S.S.R., Inves. No. TA-406-5, USITC Pub. No. 1006 (Oct. 1979).

the factual record was essentially unchanged.[30] This bizarre result is hardly a satisfactory way to either resolve trade disputes or as a diplomatic response to foreign government military adventures and can be expected to recur time and again should the Chamber's position be adopted as the sole remedy.

Moreover, the Chamber's recommendation would essentially rely on quantitative restraints which, as I have stated above, are often inappropriate and unsatisfactory relief for industries where the primary concern is the import price. This is in marked contrast to the settlement procedures under existing law where a price restraint is the objective a settlement agreement.

II. GATT ARTICLE XVII, WHICH REQUIRES STATE ENTERPRISES TO BUY AND SELL ACCORDING TO COMMERCIAL CONSIDERATIONS, SHOULD BE IMPLEMENTED

An unexplored mechanism for dealing with imports from nonmarket economy countries is the obligation under GATT Article XVII which requires signatories to insure that state trading enterprises make purchases and sales solely in accordance with commercial considerations and provide an opportunity to other contracting parties to participate in such purchases or sales. In other words, Article XVII requires that state enterprises buy -- and more important -- sell their

30. Anhydrous Ammonia from the U.S.S.R., Inves. No. TA-406-6, USITC Pub. No. 1051 (Apr. 1980).

products at prices that are consistent with private enterprise pricing. This commercial obligation, which is applicable to state trading in market and nonmarket economy countries that are GATT members, is uniquely suited to dealing with imports from nonmarket economies where most enterprises clearly fit the definition of "state trading enterprises." In fact, Article XVII was originally intended by the framers of GATT to deal with this specific problem.

While the term "state enterprise" is not expressly defined in Article XVII, it is clear both from the records of the ITO/GATT negotiating sessions and from subsequent GATT panel reports that Article XVII was designed to apply to a broad range of trading organizations subject to varying degrees of government influence and control. For example, preparatory meeting minutes reflect the understanding of the drafters that Article XVII is intended "to cover . . . any transaction by a state enterprise through which such enterprise could intentionally influence the direction of total import or export trade in the commodity in a manner consistent with other provisions of the [agreement]."[31] And, a report of the Havana conference (at which the final draft of GATT was completed) indicates that the term "state enterprise" was generally understood to include "any agency of government that engages in purchasing or selling."[32]

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31. U.N. Doc. E/PC/T/160 4 (1947).

32. U.N. Doc. ICITO/1/8 114 (1948).

In 1959, a GATT panel organized to review Article XVII reported that "not only state enterprises are covered by the provisions of Article XVII, but all enterprises which enjoy exclusive or special privileges . . . ." Then, in 1960, this panel defined "enterprise" as follows:

> The term "enterprise" was used to refer either to an instrumentality of government which has the power to buy or sell or to a nongovernmental body with such power and to which the government has granted exclusive or special privileges.33

These documents clearly indicate the intention of GATT to encompass state controlled entities (including "agencies that engage in purchasing or selling") as well as enterprises in the corporate form which are controlled by the government or private firms which enjoy "special privilege."

It is also clear that the original GATT delegates intended to develop a set of rules under Article XVII that would be applicable to all type of economies. For example, the delegate from France stated in 1946:

> France wishes to see that the organization which we are planning here extends to the rest of the world . . . . There does not exist, in our opinion, any necessary connection between the form of the productive regime and the internal exchanges in one nation, on the one hand, and on her foreign economic policy on the other. The United States may very well continue to follow the principal, the more orthodox principal, of private initiative. France and other European countries may turn towards planned economy. The USSR may uphold and maintain the Marxist ideal of collectivism

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33. GATT, 9th Supp. BISD 179, 183-84 (1961).

> without our having to refuse to be in favor of a policy of international organization 34

This perspective was mirrored in a 1947 State Department comment on Article XVII:

> To a greater extent than ever before, governments are participating directly in foreign trade. Some, like the Soviet Union, have a complete government monopoly of foreign trade. More often, the government has a monopoly of trade in a particular product. A third form of state trading occurs when the government owns an enterprise which engages in foreign trade even though it is not a monopoly.
>
> The purpose of [the State Trading] Articles . . . is to establish rules for state trading activities that will produce, as nearly as possible, the same effect intended by the rules in the rest of the Charter governing other businesses. The key to the approach is Article 31 (now GATT Article XVII) which provides that all state trading enterprises should conduct themselves along commercial lines. . . .35

Indeed, the delegates charged with revising these provisions reported that "[i]n revising the draft . . . the Subcommittee has aimed at producing a text sufficiently flexible to permit any negotiations with a Member which maintains a complete or substantially complete monopoly of its external trade."[36]

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34. U.N. Doc. E/PC/T/PV.3 at 18 (1946).

35. Office of Public Affairs, U.S. Department of State, Informal Commentary to Accompany Preliminary Draft of Articles of a Charter for an International Trade Organization of the United Nations (1947) (emphasis added).

36. U.N. Doc. E/PC/T/160 at 8.

It is clear then, that GATT Article XVII was intended from the beginning to be applicable to both market and non-market economies and to avoid nullification of GATT obligations by state trading enterprises.[37] The Official Comment on the Geneva draft in 1947 is additional evidence of this understanding:

> The problem of relations between nations which conduct their trade wholly or in part by means of state trading enterprises and those which conduct their trade through private channels is of immediate and significant concern to countries in both these categories. The purpose of the provisions on state trading is to establish principles parallel to provisions governing private trade so that the structure of the Charter obligations and principles cannot be nullified by the activity of state trading enterprises.[38]

Accordingly, it was the position of many countries, including the United States, that the existing rules on state trading would extend to centrally planned economies as well as to market economies.[39]

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36. K. Dam, The GATT: Law and International Economic Organization (1970) at 317.

38. Preliminary Analysis of the Geneva Draft Charter for an International Trade Organization (1947) at 88 [hereinafter referred to as Preliminary Analysis of Geneva Draft] (emphasis added).

39. As noted by the head of the original U.S. delegation after the final negotiations were concluded, "If the Soviet Union were to join the ITO, the principle of nondiscrimination would apply. The rules of the Charter governing State trading operations would be no weaker here than in any other case." C. Wilcox, A Charter for World Trade (1949) at 102.

While there is no room for dispute that Article XVII was intended to apply to market and nonmarket economy enterprises, the definition of "commercial considerations" in the conduct of state trading operations has yet to be resolved.[40] The earliest GATT consideration of the scope of the state trading obligation of Article XVII occurred in 1955, with the addition of the provision requiring notification of the trade conducted by such operations.[41] At the first full session in 1958, a panel was appointed to examine the phenomenon of state trading in greater detail.[42] This panel met in 1959, 1960 and again in 1962 to review Article XVII and the problems presented by state trading. As noted by one GATT observer, "it was realized that with fully state-trading economies participating in the work of GATT, the importance of precise and close supervision of the existing rules would

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40. Delay was not unexpected:

"It must be recognized that state trading is a relatively new phenomenon, and thus the establishment of rules of conduct and of a forum for discussion may make possible the development of something approaching case law on the application of commercial principles to state trading." Preliminary Analysis of Geneva Draft, supra note 38 at 88.

See also the State Department Commentary on Article XVII, Office of Public Affairs, U.S. Department of State, Informal Commentary to accompany Preliminary Draft of Articles of a Charter for an International Trade Organization of the United Nations. (Feb. 1947).

41. G. Curzon, Multilateral Commercial Diplomacy: The General Agreement on Tariffs and Trade and Its Impact on National Commercial Policies and Techniques (1965) at 293.

42. Id. at 293-294.

become of overall importance."[43] Although the panel made no changes in the text of the Article, it clarified the definition of State trading enterprises, improved notification procedures, and obtained assurances that a thorough investigation of state trading activities would be conducted every three years.[44]

In the years following, state trading activities were rarely the subject of important debate. Discussions focused primarily on agricultural protectionism and on barriers maintained by developed countries against the exports of less developed countries. In the opinion of one noted author, the relative absence of GATT activity in this area reflects GATT's preoccupation with more obvious trade barriers and its failure to come to grips with the problems of state trading, which presently constitute a principal barrier to the integration of the diverse economies of member states.[45]

While the U.S. has recognized from the beginning that the key to Article XVII is the requirement that "state trading enterprises should conduct themselves along commercial lines . . ."[46] there is presently no agreement on the meaning of these provisions. Yet it is clear that there is a need for action to give these provisions substance, not only in

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43. Id. at 294.

44. K. Dam, supra note 37, at 329-330.

45. Id. at 331.

46. See note 35, supra and accompanying text.

the context of nonmarket economies but also state trading in general. In both cases the problem is the same -- the failure to operate in accordance with commercial considerations and the escalation of government goals (employment, etc.) as the primary factor in production decisions.

State trading and the impact on U.S. markets is a relatively recent development which may well explain the lack of urgency in giving meaning to the commercial obligation of Article XVII. The growing role of state trading by market and nonmarket economies, however, is an increasing problem that Professors Walters and Monsen explored in the Harvard Business Review:

> Although foreign state-owned companies have not in the past posed a serious competitive challenge to U.S business, the spread of state ownership during the 1970s is rapidly changing the rules of the game in international competition.47

In Europe, in particular, "the 1970s have seen a new wave of government ownership sweep through European industry."[48] The motivations for this "new wave" are, according to Walters and Monsen, rescue takeovers of faltering enterprises, diversification of existing state-owned enterprises and promotion of high-risk ventures.

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47. Kenneth D. Walters and R. Joseph Munson, State-Owned Business Abroad: New Competitive Threat, Harvard Business Review, March-April 1979 at 160. [Hereinafter cited as Walters and Monsen.]

48. Id. at 162.

Walters and Monsen perceive this trend as a challenge to U.S. business because of the competitive advantages that are (in their judgment) the handmaidens of state ownership. These advantages, which directly or indirectly are likely to have an effect on prices, are said to include:

-- No need to earn profit (citing particularly the European steel industry which has lost billions in recent years)

-- No fear of loss or bankruptcy ("state ownership confers immortality on enterprise")

-- Preferential access to state financing ("employment, not profitability, is the dominant concern in deciding where new investments funds are to go")

-- Built-in markets (citing as an example the French government's "persuasion" of Air France to purchase from a state-owned firm despite the carrier's preference for U.S. aircraft).49

-- In sum, state trading enterprises have advantages in their home markets. They are arms of the state, with special preferences in dealing with their owner, the government. They are used to support and subsidize local enterprises. And, most important of all, they operate at home and abroad without the need to earn profits, which governs the private sector. Losses and new investment needs are financed from a seemingly bottomless cornucopia of government grants, subsidies, and loans (sometimes at favorable low interest rates).50

These "advantages" would appear to have the same trade distorting effect whatever the nature of the economy. Therefore, there is a sound rationale for dealing with state trading without distinguishing between market and nonmarket economies.

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49. Id. at 164-167.

50 Id. at 168.

To give substance to the Article XVII commercial obligation, I suggest that interpretation of this Article be a major objective in the next round of GATT negotiations. In the meantime, Congress should direct the U.S.T.R. to explore the feasibility of using Section 301 to define as unreasonable state trading -- by any economy -- that is not consistent with commercial considerations.

III. APPLICATION OF THE COUNTERVAILING TO THE NONMARKET ECONOMIES

The Department of Commerce has concluded that the countervailing duty law cannot be applied to the nonmarket economies. This decision was appealed to the Court of International Trade which reversed the Department's decision arguing that the law makes no provision for an exception for those economies.[51] In its opinion, the Court emphasized the fact that the law applies to "any country" and that where a subsidy practice meets the definition of United States law then there is no authority on the part of the Commerce Department to carve out an exception for the nonmarket economies. This decision has now been appealed to the Court of Appeals for the Federal Circuit which has the decision under review. Because I am counsel for the domestic peti-

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51. See Carbon Steel Wire Rod from Poland and Czechoslovakia, 49 Fed. Reg. 19,370 and 19,374 (1984); Continental Steel Corp., et al. v. United States, Consol. Ct. No. 84-05-00728, No. 85-77 (C.I.T. July 30, 1985).

tioners in that case, I will limit my comments to a few observations on facts developed by the Department.

To date, the Department has only conducted one investigation of subsidies in a nonmarket economy where the foreign government and producer participated and responses to questionnaires were verified. Since the petition in that investigation only alleged export subsidies, domestic subsidies were not at issue and have not been factually investigated by the Department.

In summary, Poland acquired a large foreign debt in the late 1970's which became increasingly difficult to service, thus creating an urgent need to generate foreign exchange from export earnings. To resolve this crisis, Poland adopted a law on financial regulation of state enterprises on February 26, 1982, which "relies on economic mechanisms, instead of 'directives' to stimulate exports." The most important "stimulator" is Article XXIX which provides that an enterprise may "retain part of hard currency earnings from its exports of goods and services." These earnings may be accumulated in a special account in domestic Polish banks and "may be used by the enterprise for financing of imports." Similarly, an enterprise may "cede a portion of foreign exchange resources accumulated on special accounts" to other enterprises. At the end of 1983, Poland expanded the currency retention scheme "to include the option of depositing

the accumulated foreign currency funds in interest carrying long term bank accounts."

Currency retention accounts are described as export subsidies in Annex A to the Subsidies Code which is incorporated in the statutory definition of countervailable subsidy adopted by Congress in the 1979 Trade Agreements Act. There is no question but that the Polish currency retention system exactly matches the description in Annex A and is comparable in all material respects to currency retention account programs that have been countervailed by the United States in numerous cases, most recently in an investigation involving pistachio nuts from Iran. Moreover, the Polish currency retention program has been successful.

According to the Polish questionnaire response, "as many as 1,621 manufacturing enterprises have joined the retention program" since its adoption the year before and the funds credited to retention accounts totaled $1,041.9 million, of which half had been used for imports and the balance remained "at the disposal of the account owners." According to a report of the Polish Minister for Economic Affairs, under the automatic system of allocation of foreign exchange, the rights of manufacturers "to spend hard currency on imported merchandise depend on the amount of hard currency earnings from exports accumulated on the account according to the fixed retention rate." Moreover, since 1983, interest is

payable on retention account balances as a further inducement to export.

This currency retention program has been described by the Polish authorities as the most important "stimulator of exports." Its value can be demonstrated by the fact that enterprises that do not export have to rely on allocations from the central bank or participate in a foreign exchange auction that was acknowledged in Polish testimony at the Department. Retention accounts thus have a tangible value because those enterprises that lack such accounts, because they do not export, have to participate in an auction in order to obtain foreign exchange.

One indicia of the program's success is the fact that wire rod exports from Poland to the United States increased from zero in 1981, the year before the program was inaugurated, to 8,000 tons in 1982. In 1983, the same year in which 1,621 enterprises signed up for retention accounts, 20,000 tons of wire rod were exported to the United States in just nine months. Overall, Polish exports increased 27.3 percent in the first half of 1983 as compared with the first half of 1982 and increased 27 percent in comparison with the second half of 1981.

The reason for the success of these programs lies in the fact that Polish enterprises -- in common with those in other nonmarket economies -- compensate employees through a system of incentives that rewards performance that meets or exceeds

plan goals. That is, employees and managers that achieve higher exports have measurable personal gains as a reward. Export incentives, therefore, perform precisely the same role in nonmarket economies as they do in Iran, Yugoslavia or Brazil.

The incentive role of Polish subsidies is also illustrated by the other export promotion program adopted by Poland in 1982 and which is described in official Polish documents as the second most important stimulator of exports. This "stimulator" is the exemption of income from foreign sales from certain income tax and payments to unemployment funds. Essentially this exemption means that bonuses and payments to managers and employees carry less tax burden if the employer exports than if the enterprise sells in the home market. As described by Poland sources, the "amount of bonuses free from FAZ [the national reemployment fund] taxation is increased by the equivalent of 20 percent of export related income tax rebate." Obviously the incentive provided by this measurable exemption is within the four walls of the export subsidy for income tax exemptions that is described in the Annex to the Subsidies Code. There is no meaningful or, indeed, discernible difference between the Polish exemption of foreign sales earnings sales from certain taxes and those export earning tax exemptions provided by other countries which have been countervailed by the United States. In fact, the Polish tax exemption is substantively indistinguishable

from the U.S. DISC which was recently held to be in violation of GATT Article VI and the Subsidies Code, and, as a result, substantially modified by Congress.

CONCLUSION AND EXECUTIVE SUMMARY

The laws regulating nonmarket economy imports are not a failure, are not uniquely unpredictable, and are not unworkable. Such imports do pose complex questions of policy and administration of the trade remedy laws and for this very reason preclude a simple or ubiquitous solution. Since a goal of trade law should be to bring nonmarket economies into the discipline of the GATT, which is implemented by U.S. trade remedies including the antidumpting and countervailing duty laws, the objective of this Committee should be to refine these laws in their application to the nonmarket economies rather than a search for an all-embracing alternative which would, if enacted, only serve to isolate those countries from the GATT system.

Refinements that would accomplish this goal could include expanded options in determining the fair value of nonmarket economy imports in antidumping investigations that would reduce reliance on the need to locate willing and cooperative surrogates. This should be accompanied by a change in procedures to permit an early decision on the choice of surrogate and a method of calculating fair value so that the investigatory period can be devoted to serious and informed

consideration of the issues The potential for settlement of nonmarket economy dumping disputes pursuant to the existing suspension of investigation procedures should be encouraged. Since the major issue in such cases is the price of the imported product, the antidumping law, rather than sole reliance on quantitative (quota) restrinats is most likely to lead to satisfactory results.

Predictability of results is difficult even in market economy cases but the prospective nature of the antidumping remedy alleviates unfairness. After provisional remedies are adopted, the settlement procedures can be utilized to rationalize the dispute and, in any event, after the investigation is concluded there is a defined less than fair value benchmark to guide pricing decision.

GATT Article XVII, which requires state enterprises in both market and nonmarket economies, to operate according to commercial coinsiderations should be implemented in multilateral negotiations and used as a guide for dispute resolution under Section 301. Finally, where nonmarket economies provide identifiable export (or even domestic) subsidies, the countervailing duty law should be applied.

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AUG 5 1977

MEMORANDUM FOR: THE HONORABLE WARREN CHRISTOPHER
ACTING SECRETARY OF STATE

THE HONORABLE JUANITA M. KREPS
SECRETARY OF COMMERCE

Subject: Antidumping Case on Polish Golf Carts

Thank you for your memorandum of August 1, 1977, on this subject. I fully appreciate and share the concern you express regarding the implications of this case (1) for U.S./Polish trading relations.

Unfortunately, as you recognized in your memorandum, our freedom of action in this case is severely circumscribed by the provisions of the Antidumping Act. The law precludes Treasury from accepting the prices or constructed value in a state-controlled-economy country, in this case Poland, for use as a standard for comparing export prices to the U.S. Instead, we are required to use sales prices of similar merchandise produced in a non-state-controlled-economy country -- either the U.S. or another country. In the usual case, Treasury attempts to use prices in a country other than the U.S. Here, however, we are presently aware of golf cart production in only one other country, Japan, and Japanese prices are significantly higher than U.S. prices.

I have instructed the General Counsel's office to maintain close contact with your staff in their efforts to locate golf cart production in other third countries and accordingly will defer a final decision on this case. I hope that this search can be concluded rapidly, however, since Polish golf carts are continuing to enter the country (2) Should we have no choice but to appraise them on the basis of U.S. prices, delay in making the decision only heightens the ultimate financial impact upon the Poles.

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Although the Poles have the option of asking the International Trade Commission to reconsider the injury question, it is difficult to predict the outcome of a petition because of the absence of precedent in a case where the domestic industry continues to argue that it is injured.

I also wish to assure you that we are maintaining close contact with the Polish Government to avoid any possible misunderstandings. To that end, Bob Mundheim, our General Counsel, is meeting with Mr. Soldaczuk, Economic Counselor, and Mr. Werner, Commercial Counselor, of the Polish Embassy on Friday morning, August 5.

Robert Carswell
Acting Secretary

153-C

DEPARTMENT OF STATE
WASHINGTON, D.C. 20520

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December 16, 1977

MEMORANDUM FOR: Mr. Richard N. Cooper

FROM : John F. Wilson

SUBJECT : Status of Polish Golf Cart Case

This case has dragged on for several years and has become byzantinely complex. The potential anti-dumping duties ($2-3 million) are relatively small, although the Poles have claimed that paying this amount could bankrupt their U.S. affiliates which import and distribute the golf carts. The Poles are also agitated because they feel the whole issue of access to the U.S. market is at stake. The present note summarizes my understanding of the essential elements and current status of this case, based on conversations with parties here and at Treasury.

The case against the Poles was brought by Cushman, a U.S. producer, in 1974. (Cushman has subsequently ceased manufacturing golf carts). At that time Poland was selling its golf carts at about 3/5 the U.S. price and had rapidly gone from zero to around 20 per cent of the U.S. market. Treasury found against Poland in its anti-dumping investigation and the ITC found injury, so anti-dumping duties were levied. Customs appraisement has been completed only through August, 1975. Polish golf carts have continued to enter the market (at higher prices) since that time. The importer has been required to post bond for anti-dumping duties which may be due.

The main problem in this case is how to set "fair-market value" on a product from a non-market economy. Under amendments to the 1921 Anti-Dumping Act incorporated in the 1974 Trade Act, attempts were made to use data from a third-country producer, in this case a Canadian manufacturer. The sample sales data from this manufacturer (which has since dropped out of the business, too) were deficient. Absent third-country producer data, under current regulations the Poles are required to sell at a price at least equal to the U.S. cost-of-manufacture or ex-factory selling prices, plus transportation and insurance. The Poles feel (as does Treasury) that such

a procedure is intrinsically exclusionary and inconsistent with the aim of an anti-dumping act.

Treasury is about to propose new regulations to interpret the provisions of the amended Anti-Dumping Act in cases involving state-controlled economies, and where no reliable data on free-market, third-country production exists. The proposed regulation may be put out in the Federal Register as early as next week, and could potentially go into effect following the 30-day period of comment. The sense of the regulation would be that cost of production in such cases would be derived from valuation of the various physical and labor inputs into such products. Data on the required inputs would be obtained, if possible, from the state-controlled producers (alternatively from the complaining U.S. producers), and valuation would be in terms of prices in third-countries at a comparable level of development as the actual state-controlled producer. In the present case, Spain and Portugal have been mentioned as possible valuation loci. "Fair-value" in the U.S. market would be the resulting constructed cost-of-production plus transportation and the required profit margin.

The Poles reportedly accept this procedure in principle. Their discontent has to do with the timing of the application of the new regulation. Subject to some more legal consultation, Treasury could either a) apply the new valuation procedure to golf carts entering the U.S. market as from the date the regulation enters into force or b) apply the procedure retrospectively to golf carts entering after August, 1975, the date after which customs appraisal has not yet been made. It seems probable that Treasury will go for the first of these options; the Poles are insistent on the second. They continue to make frequent representations to State and Treasury officers in this regard.

It is not entirely clear to me -- nor was it to those with whom I spoke -- why the Poles are so adamant on this issue. At first glance, they have little to gain, even if their view prevails. As noted above, potential anti-dumping duties from August, 1975 to present come to about $2-3 million under present procedure. Even if the Poles have their way, it is presently unknown what the fair-value calculations would show if the new procedure were applied retroactively. Such cal-

culations could easily continue to show dumping margins, which would reduce the net Polish saving. In addition, the Poles have evidently run up large legal costs in their pursuit of this matter; the longer it goes on the larger these costs can become. One feature of the situation which may help explain the Polish position is that the distributor of the golf carts is being sued for treble damages in the Federal District Court of Delaware. The Poles may believe (and they may be correct) that if they do not get their way on the interpretation of the new regulations, they may be liable for much larger damages than the $2-3 million mentioned above.

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Advisory Committee Act, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12065. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Telephone: 202-377-4217.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret A. Cornejo, Committee Control Officer, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: 202-377-2583.

Dated: December 28, 1981.

Talbot Lindstrom,

Deputy Director, Office of Export Administration.

[FR Doc. 81-40988 Filed 12-31-81; 8:45 am]

BILLING CODE 3510-25-M

Truck Trailer Axle-and-Brake Assemblies and Parts Thereof From Hungary; Suspension of Investigation

AGENCY: International Trade Administration, Commerce.

ACTION: Suspension of Antidumping Investigation on Truck Trailer Axle-and-Brake Assemblies and Parts Thereof From Hungary.

SUMMARY: The Department of Commerce (the Department) has decided to suspend the antidumping investigation involving truck trailer axle-and-brake assemblies and parts thereof from the Hungarian People's Republic. The basis for the suspension is an agreement by the Hungarian Railway Carriage and Machine Works (RABA), a manufacturer and exporter which accounts for all of the known imports of this product from Hungary, to revise their prices to eliminate sales of this merchandise to the United States at less than fair value.

With this notice's publication we are directing officers of the U.S. Customs Service to resume liquidation of this merchandise. They also are being instructed to refund any cash deposited and to release any bond or other security posted as a result of the prior suspension of liquidation declared in the preliminary determination.

EFFECTIVE DATE: January 4, 1982.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230 (202) 377-3464.

SUPPLEMENTARY INFORMATION:

Suspension of Antidumping Investigation

The Department of Commerce has decided to suspend the antidumping investigation involving truck trailer axle-and-brake assemblies and parts thereof from the Hungarian People's Republic. The basis for the suspension is an agreement by the Hungarian Railway Carriage and Machine Works (RABA), a manufacturer and exporter which accounts for all of the known imports of this product from Hungary, to revise its prices to eliminate sales of this merchandise to the United States at less than fair value.

With this notice's publication we are directing officers of the U.S. Customs Service to resume liquidation of this merchandise. They also are being instructed to refund any cash deposited and to release any bond or other security posted as a result of the suspension of liquidation declared in the preliminary determination. If, within 20 day's of this notice's publication, we receive a request from an interested party to continue this investigation in accordance with section 734(g) of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. 1673c), the Department and the U.S. International Trade Commission (the Commission) will do so, notwithstanding the suspension agreement. A final determination will not be made in this case unless there is such a request for continuation of the investigation in which case the Department will make a final determination.

The Department will conduct an administrative review of this case within 12 months of this notice's publication.

Case history

On February 12, 1981, the Department received a petition from counsel representing Rockwell International Corporation of Pittsburgh, Pennsylvania. The petitioner simultaneously filed a copy of the petition with the United States International Trade Commission. The petition alleged that truck trailer axle-and-brake assemblies and parts thereof are being sold in the United States at less than fair value and that the truck trailer axle industry in the United States is being materially injured by reason of the importation of this merchandise. After conducting a summary review of the petition, we instituted an investigation, and notice was published in the **Federal Register** of March 11, 1981 (46 FR 16109).

On March 30, 1981, the Commission notified us that it had determined, as required by section 733(a) of the Act, that there is a reasonable indication that an industry in the United States is materially injured by reason of the importation of the subject imports. The Commission's determination and the reasons therefore were published in the **Federal Register** of April 8, 1981 (46 FR 21121).

On June 19, 1981, the Department decided that Hungary is a state-controlled-economy country for the purposes of this investigation. Subsequently, Italy was selected as the surrogate country for the purposes of determining fair value.

On September 10, 1981, we preliminarily determined that truck trailer axle-and-brake assemblies are being sold in the United States at less than fair value. Notice of the preliminary affirmative antidumping determination was published in the **Federal Register** on September 17, 1981 (46 FR 46152).

We verified RABA's response to the producer's questionnaire on September 28-30, 1981. On October 5-7, 1981, we verified the response supplied by O/CAVA, the company in the surrogate country. We determined that RABA's exports of truck trailer axle-and-brake assemblies and parts thereof the United States were made at prices lower than the equivalent O/CAVA home market prices during the investigatory period of September 1, 1980 through February 28, 1981.

On October 16, 1981, Rockwell requested that the Department find that critical circumstances exist in this investigation, alleging that [illegible] Corporation, the importer, should have known that RABA was selling at less than fair value and that there had been massive imports over a short time. The Department [illegible] November 18, 1981, informed petitioner that it was denying Rockwell's request because [illegible] Corporation could not have known that RABA would be selected as the surrogate country in this investigation and, therefore, could not have known that RABA would be found selling at less than fair value.

Counsel for RABA, in a letter dated October 29, 1981, proposed to enter into a suspension agreement pursuant to section 734 of the Act and section 353.42 of the Commerce Department Regulations. In the proposal RABA stated that all necessary price

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adjustments would be made to eliminate completely any amount by which the fair value of the product exceeds the U.S. price.

For purposes of this agreement, we do not consider it appropriate or necessary to depart from our preliminary determination that axles manufactured by O/CAVA in Italy are such or similar merchandise for purposes of this investigation.

RABA also has agreed to allow the Department to monitor the agreement and will submit quarterly reports detailing sales of the products to the United States. Further, RABA will make any price adjustments that are necessary after each administrative review.

On November 3, 1981, we provided copies of the proposed suspension agreement between RABA and the Department of Commerce to the petitioner for its consultation and to other parties to the proceeding for their comments.

On December 1, 1981, Rockwell International Corporation and Dana Corporation, an interested party, submitted comments on the proposed suspension agreement.

The Department has consulted with the petitioner and has considered all comments, in accordance with section 734(e) of the Act (19 U.S.C. 1673c). The Department has determined that the criteria for suspension of an investigation pursuant to section 734(e) of the Act have been met. The Department is satisfied that the agreement offsets completely the amount by which the fair value exceeded the U.S. price.

We have considered comments received on the proposed suspension agreement. The Department has agreed to make the following amendments. First, the Department has included separate brake assemblies in the agreement (see section one of Annex I). Second, the Department has clarified the section which describes when RABA may request a termination of the agreement. Third, the Department has further described the monitoring requirements in this Federal Register notice. Finally, the Department has made several minor changes in language which do not substantially alter the agreement.

The Department will review the agreement according to section 751 of the Act, either annually or at such shorter periods as necessary, rather than an automatic quarterly review as the petitioner requests. The petitioner also has requested that the Department make Eaton Corporation a party to the suspension agreement. The Department has no valid legal basis to require Eaton to become a party to this agreement, or to submit data on its inventories and sales of the merchandise since Eaton is not related to RABA and this is a purchase price situation. Eaton Corporation, however, has given the Department a letter stating its willingness to provide the Department with any information in its possession concerning the purchase of axles from RABA.

The terms and conditions of the agreement are set forth in Annex I to this notice.

Monitoring Terms

RABA shall supply the Department with such information as the Department deems necessary to monitor the assurance that no future sales at less than fair value will occur, and such information as required for the Department to monitor compliance with the terms of the agreement, including, but not limited to the following.

RABA shall submit a quarterly report listing the following information for each entry: total value, quantity, terms of sale (e.g., fob, terms of payment, etc.), sales price per model, copies of the purchase order and shipping invoice of the product to the United States, whether such shipments occur directly or through intermediary countries. The first such report shall include all entries of the merchandise upon which liquidation had been suspended as well as those entered on or after the effective date of the suspension agreement and shall include all entries occurring through December 31, 1981. This first report shall be received by the Department no later than January 30, 1982. Subsequent quarterly reports will be provided to the Department on the basis of calendar quarters. Such reports shall be filed with the Department no later than 30 days from the end of each calendar quarter.

Further, RABA shall provide any additional information that the Department deems necessary in order to assure continuation of the agreement. The Department may require additional information as is necessary in order to conduct its administrative review under section 751 of the Act. This additional information will include, but not be limited to, all data concerning any subsequent price adjustments relative to the subject merchandise between RABA and Eaton. The administrative review will occur annually or at such shorter intervals as the Department deems necessary to ensure that there are and will be no sales at less than fair value.

The Department shall determine the information to be verified under section 751 review.

The Department shall instruct the U.S. Customs ports of entry to report all entries of the product to the Department for as long as this agreement remains in effect.

Monitoring this agreement is considered to be practicable since there is only one exporter. As long as RABA submits all information requested, the Department will be able to effectively monitor the agreement.

Enforcement

The Department shall enforce this agreement in accordance with section 734(i) of the Act (19 U.S.C. 1673c). The Department shall reopen the investigation with respect to the products exported by RABA that are subject to this agreement (1) if the Department determines that the agreement has not been complied with; (2) if the Department determines that the suspension of the investigation is no longer in the public interest; or (3) if the Department determines that effective monitoring is no longer practicable.

Public Interest

As this proposed agreement, *inter alia*, eliminates all sales of the merchandise at less than fair value, influences axle producers in the United States to be competitive and, therefore, is of direct benefit to consumers of trailer axles, it is deemed to be in the public interest.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

December 29, 1981.

ANNEX I—TRUCK TRAILER AXLE-AND-BRAKE ASSEMBLIES AND PARTS THEREOF

Suspension Agreement

Pursuant to the provisions of section 734 of the Tariff Act of 1930 (19 U.S.C. 1673c) (the "Act") and §353.42 of the Commerce Department Regulations (19 CFR 353.42), the Department of Commerce (the Department) and the Hungarian Railway Carriage and Machine Works (RABA) enter into the following agreement on the basis of which the Department shall suspend its antidumping investigation with respect to truck trailer axle-and-brake assemblies and parts thereof from Hungary to the extent and in accordance with the terms and provisions set forth below.

I. Product Coverage

The investigation shall be suspended as to those trailer axle-and-brake assemblies and parts thereof (the "product") which are included in the investigation and are imported under item numbers 692.32 and 692.40 of the Tariff Schedules of the United States. This agreement also includes any parts which may be imported under any other

TSUS category to be utilized in trailer axles. These parts include, but are not limited to the beam, spindle, brake spider, camshaft, brake shoes, and separate brake assemblies when imported for use on trailer axles.

It is understood that this agreement does not include separate brake assemblies and other parts which are to be utilized solely in truck components other than trailer axles.

2. Basis for the Agreement

A. RABA agrees to make any necessary price adjustments to eliminate completely any sales of the product at less than fair value, as determined on the basis of the price of such or similar merchandise in the surrogate country and appropriate adjustments attributable to bringing the merchandise into the United States, by ensuring that:

(1) Beginning from the effective date of suspension of the investigation, the price RABA will charge any U.S. importer or customer for sales of the product which are entered into the United States or withdrawn from warehouse for consumption in the United States or previously released under cash deposit, bond or other security pursuant to the Department's preliminary determination (46 FR 46152) will not be less than the current fair value of the product as determined by the Department on the date of initialing of the proposed agreement.

(2) Subsequent price adjustments will be made by RABA as necessary to ensure that future sales of the product will not be made at less than fair value. Such adjustments shall be made in accordance with the Department's administrative review under section 751 of the Act (and § 353.53(a) of the Regulations).

(B) In accordance with the applicable law and regulations, this agreement applies to trailer axle-and-brake assemblies and parts thereof, described in paragraph 1 above, produced by RABA, which enter the United States for consumption therein, either directly or through intermediaries and which are exported either directly from Hungary or are transshipped through third countries.

(C) This agreement has no termination date. The Department will not consider a request for termination of this agreement until, at a minimum, it is able to determine that RABA has honored the agreement for at least two years from the effective date of the agreement.

3. Monitoring

Upon the request of the Department, RABA will supply to the Department such information as the Department deems necessary to ensure that RABA is in compliance with the terms of this agreement. At a minimum this will include a quarterly report from RABA itemizing all shipments and prices of trailer axle-and-brake assemblies and parts thereof to the United States.

The Department shall conduct administrative reviews under section 751 of the Act annually or at such shorter intervals as the Department deems necessary to ensure that there are and will be no sales at less than fair value. The Department shall verify information upon which its review is based.

The Department shall also request the U.S. Customs Service to direct the ports of entry to forward an Antidumping Report of Importations for all entries of such trailer axle-and-brake assemblies and parts thereof while this agreement is in effect.

4. Reopening of Investigation

The Department shall reopen the investigation with respect to the axle-and-brake assemblies and parts thereof exported by RABA that are the subject of this agreement if the Department determines that RABA has not honored its obligations under this agreement. Additionally, the Department will reopen the investigation if it determines that the suspension agreement is no longer in the public interest or that effective monitoring is no longer practicable.

5. Other Provisions

In entering into the agreement, RABA does not hereby admit that any sales of the product have been made at less than fair value. RABA acknowledges that all other types of axles imported are subject to the import laws of the United States. The effective date of this suspension agreement is January 4, 1982.

Agreed to on this the 18th day of December, 1981.

Arthur T. Downey,

Hungarian Railway Carriage and Machine Works.

I have determined that the provisions of paragraph 2 eliminate any current unfair trade practices which were the subject of this investigation and that the provisions of paragraph 3 ensure that this agreement can be monitored effectively. Therefore, I have determined that this agreement to suspend this investigation meets the requirements of section 734(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c) and is in the public interest as required in section 734(d) of the Act.

Gary N. Horlick,

United States Department of Commerce.

[FR Doc. 81-37780 Filed 12-31-81; 8:45 am]

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National Bureau of Standards

Membership of General Performance Review Board

In a notice published in the Federal Register on September 2, 1981, the National Bureau of Standards (NBS) announced the latest changes in the membership and terms of the General Performance Review Board (GPRB). The purpose of the GPRB is to review performance agreements, performance appraisals and ratings, recommendations for certain personnel actions and other related material, and to make appropriate recommendations to the Director of NBS as the Appointing Authority for the Senior Executive Service at NBS concerning such matters in such a manner as will assure the fair and equitable treatment of senior executives and the organizations of which they are members and instill in the minds of such senior executives confidence in the integrity, competence, and impartiality of the GPRB. The GPRB performs its review functions for all NBS senior executives except those who are members of the NBS Executive Board and those who are members of the GPRB.

This notice announces further changes in the membership through the appointment of the following individuals for the terms shown below.

Mr. Karl E. Bell, Deputy Director of Administration, Office of the Director of Administration, National Bureau of Standards, Washington, D.C. 20234. Term—2 years

Dr. Howard T. Yolken, Chief, Office of Measurements for Nuclear Technology, National Measurements Laboratory, National Bureau of Standards, Washington, D.C. 20234. Term—2 years

Dr. George A. Sinnott, Associate Director for Technical Evaluation, National Engineering Laboratory, National Bureau of Standards, Washington, D.C. 20234. Term—2 years

The membership and expiration dates of the GPRB as now constituted, including the changes made by this notice, are set out below:

Dr. Howard E. Sorrows, Chair, Technology Adviser to the Director, National Bureau of Standards, Washington, D.C. 20234. Expiration of Appointment—September 11, 1982

Dr. Arthur O. McCoubrey, Associate Director for Measurement Services, National Measurement Laboratory, National Bureau of Standards, Washington, D.C. 20234. Expiration of Appointment—September 12, 1982

Dr. George A. Sinnott, Associate Director for Technical Evaluation, National Engineering Laboratory, National Bureau of Standards, Washington, D.C. 20234. Expiration of Appointment—December 31, 1983

Mr. Bascom W. Birmingham, Director, Boulder Laboratories, National Bureau of Boulder, Colorado, 80303. Expiration of Appointment—September 11, 1982

Mr. Karl E. Bell, Deputy Director of Administration, Office of the Director of Administration, National Bureau of Standards, Washington, D.C. 20234. Expiration of Appointment—December 31, 1983

Dr. Howard T. Yolken, Chief, Office of Measurements for Nuclear Technology, National Measurement Laboratory, National Bureau of

Chairman GIBBONS. Thank you very much.
Next, Mr. Suchman.

STATEMENT OF PETER O. SUCHMAN, ESQ., SHARRETTS, PALEY, CARTER & BLAUVELT, WASHINGTON, DC

Mr. SUCHMAN. Thank you, Mr. Chairman.

I am Peter Suchman, an attorney in private practice here in the Washington area and I have been so engaged for the last 9 or so years. Before that, I spent 13 years in the U.S. Government doing trade kinds of things and holding the same position that two of the other panelists did in administering the antidumping and countervailing duty laws. What I have to say is my own personal view and should not be attributed to my firm or any of our clients. What I am going to say will probably be unpopular with the chairman and members of the subcommittee.

There have been three major modifications to the U.S. trade laws since 1974, the most recent of which occurred barely 18 months ago. Some of these laws including the antidumping and countervailing duty laws were modified by all three of these statutes. Not only have these provisions been substantially amended substantively but new and complex procedures were added almost on top of one another, with the objective that: One, import protection would be granted and, two, assuring that decisions will be made more quickly and, three, providing that administrative discretion which results in solutions other than the imposition of import protection will be further curtailed.

The number of administrative investigations has increased markedly over the years as we heard this morning, as has litigation before the competent courts of jurisdiction which review the challenges to those determinations.

The cost of this legal activity in terms of attorneys fees, Government resources, higher prices to consumers and inefficiencies forced on U.S. industries is beyond calculation. We note that the ITC recently estimated that the President's voluntary restraint program on steel resulted in steel prices in the United States which were 25 to 56 percent higher than foreign prices in early 1985 and will cost U.S. exporting industries $15.7 billion by 1989. The overall cost of import controls in 1984 as Fred Bergsten's organization has estimated, and we heard this morning, for 19 U.S. industries was $56 billion in 1984.

One might argue that these costs were acceptable if, in fact, these procedures, and the import restrictions that they result in, were successfully ridding the marketplace of unfair traders as defined by U.S. law, international agreement or by the popular mythology—and if the U.S. trade position were improving. However, the opposite appears to be the case. Certainly there has been no discernible effect on our trade balance, nor any diminished cry for trade protection from those domestic industries receiving the greatest amount of protection. These are the very interests which are leading the efforts leading to further reform of the law. By this they mean revising definitions to include a wider range of governmental practices as well as additional procedural burdens on legitimate international trade. So there appears to be absolutely no em-

pirical evidence that the trade laws, after the constant tightening up of the past dozen years, have had any significant effects on U.S. competitiveness.

I might add the only discernible effect is that the Washington trade bar is busier than it has ever been before.

Spokesmen for interests seeking further legalized protectionism will maintain that the failure of these industries to regain competitiveness, despite past U.S. Government action on their behalf, results from an unwillingness on the part of the executive branch to enforce the laws as Congress intended. Anyone close to trade law administration knows this is not true. If any bias exists in trade law administration, it is clearly in favor of domestic petitioners.

There can be absolutely no doubt present law gives the executive branch all of the authority it needs to deal with legitimate unfair trade practices. What the agencies fail to acknowledge at least in their actions if not by their words, is that the deterioration in the U.S. trade position has little, if anything, to do with foreign unfair trade practices and everything to do with U.S. domestic policies and industrial practices. I know of no objective observer who supports the notion that unfair trade practices by our trading partners have been a significant cause of deterioration in the U.S. trade position.

The real problem is that too often this body and the U.S. Government as a whole have ignored the question of how to create a stable macroeconomic environment for growth and for encouraging the competitiveness of U.S. industry when passing legislation or setting policy. Often labor and industry have ignored cost control to achieve other objectives.

No amount of tinkering with the trade laws will restore comparative advantage where it has been lost due to misguided or nonexistent policies. On the contrary, mistaken emphasis on the alleged unfair trade practices of our trading partners as the cause of decline of certain U.S. industry has prevented the Congress and the executive branch from considering actions which would assist these industries in meeting competition instead of trying to hide from it.

The bottom line is that this body should reject further amendments to the U.S. trade law. There is no evidence any of the proposed changes will provide net benefits to the U.S. economy, while further amendments will continue uncertainty and increased bureaucratic interference in the international marketplace.

If the U.S. abandons the multilateral system to pursue unilateral solutions to complex international trade issues, that system will cease to exist. Unilateralism can take many forms—tariff increases, quota restrictions, voluntary restraint arrangements coerced by threats of more restrictive actions, or legal protectionism which attempts to disguise the isolation of national markets by creating complex legal procedures to redress alleged unfair trade practices. The results will inevitably be the same—the shrinkage of the world's economy and a lower standard of living for all.

I think it is important that the subcommittee understand that the rest of the world does not necessarily agree with our perceptions as to what constitutes fair and unfair practice, of what the level playing field we hear so much of around town, looks like. Many of those practices proscribed by pending legislation, and

many of those defined as unfair by existing statutes, as presently interpreted, are not universally considered to distort the marketplace.

I might point out you put your finger on one of these this morning when you mentioned below-cost sales. Certainly selling below fully allocated cost is a widespread and accepted commercial practice within the United States, yet it is actionable under the antidumping law.

In some instances, U.S. practices can be considered in violation of our own standards. Often the procedures and practices followed in the administration of these statutes are so obscure and contrary to normal business practice that legitimate businessmen have no way of knowing beforehand that they are vulnerable under U.S. law. Once they are enmeshed in these proceedings, it may take years before they can extricate themselves, no matter how uninvolved they may have been in any unfair practice.

I have a client who started to import a product from Japan after a dumping finding back in 1980 who had to consequently put up several million dollars and we are still trying to get it back for them even though the Department of Commerce found they were not dumping. It is all well and good that they will get that money back some day but, in the meantime, in their statements the auditors have to note they have a contingent liability of some millions of dollars.

Often those affected are American businessmen who must import components or raw materials in order to maintain their international competitiveness with foreign finished products. Under present law, they can literally face bankruptcy because of arbitrary decisions by low-level bureaucrats. Every expansion of the scope and complexity of these laws increases the opportunity for administrative meddling in the commerce of the United States. Perhaps the most perverse effct of the growth of legal protectionism in the United States has been to increasingly place in the hands of private individuals and interests, who stand to reap significant economic rewards by the filing of petititions no matter how unmeritorious, the means to disrupt our economic and political relationships.

Few of the issues faced in analyzing a trade dispute are black and white. Our society is one which depends upon its legal system for conflict resolution. Others do not share this approach. We must therefore curb our national inclination to attempt to resolve legitimate international disputes by imposing our solutions on others—lest whatever consensus has been developed over the past 40 to 50 years evaporates with nothing to replace it. We must also acknowledge that, just because other nations' practices are different from ours, they are not per se unfair, and that the principal means of dispute resolution in the international trade arena must continue to be negotiation, not unilateral action, whether sanctioned by statute or not.

I might add seeking to tie the hands of the executive branch by legislating unilateral action in such disputes is a rejection of the multilateral system which, by and large, has served us well.

Finally, we must recognize we are moving toward administered trade in this country—a situation in which bureaucrats and agents

of the executive branch will decide what will flow in international commerce and what they will cost. While we are deregulating our domestic economy, we are moving in the opposite direction with the increasing segment of our GNP accounted for by foreign commerce.

In conclusion, Mr. Chairman, our trade laws are in need of a major overhaul, but thus far neither the Congress or the executive branch is considering how to change them to avoid legal protectionism and to foster domestic industrial efficiency. Our existing laws and the amendments being considered are generally anticompetitive. We need to start from scratch to assure that these laws are truly remedial and procompetitive.

I might add some of the suggestions made this morning move in that direction.

In the meantime, let's not make them any worse than they already are.

Thank you.

[The prepared statement follows:]

STATEMENT OF PETER O. SUCHMAN

Mr. Chairman and members of the Subcommittee, my name is Peter O. Suchman. I am an attorney with the firm of Sharretts, Paley, Carter and Blauvelt, P.C., a New York and Washington law firm which has specialized in Customs and International Trade Law for some 40 years. Prior to joining Sharretts, Paley I spent 13 years in the executive branch of the U.S. government, in the trade and international economic policy area. As Deputy Assistant Secretary for Tariff Affairs in the Treasury Department, I was responsible for administering the antidumping and countervailing duty laws, as well as for Customs activities impacting U.S. trade policy during the period 1974-1977. The views I express here today are personal and do not reflect the opinions of my firm, or any of its clients.

Mr. Chairman, you have before you innumerable bills which seek to modify the trade laws of the United States, including the antidumping and countervailing duty provisions, Sections 201, 301, and 337. Among these is your own Subcommittee's discussion draft of the "Comprehensive Trade Policy Reform Act of 1986." It seems to me that, before considering the merits of these new legislative initiatives, the Subcommittee must recall the recent history of trade legislation and determine whether further amendments are called for.

There have been three major modifications to U.S. trade law since 1974, the most recent having been enacted barely 18 months ago. Taken as a whole, these statutes have completely rewritten almost all of the significant provisions of U.S. trade law. Some, such as the antidumping and countervail laws, were extensively modified on all three occasions, in 1974, 1979 and 1984. Not only have these provisions been substantively amended, but new, complex and expensive procedures have been added one on top of the other - almost always with the objective of: 1) making it more likely that import protection will be granted; 2) of assuring that decisions will be made more quickly; and 3) providing that administrative discretion which results in solutions other than the imposition of import protection will be further curtailed. These changes have inevitably meant that those engaged in international commerce find it more difficult to have their interests fully considered by knowledgeable officials of the U.S. government, and that administration of the laws has become even more capricious as the agencies concerned seek to deal with an increasing work load and more complex and cumbersome procedures, without adequate resources.

The number of administrative investigations has increased markedly over the years, as has litigation before the Court of International Trade seeking to challenge administrative determinations. The cost of all this legal activity, in terms of attorneys fees, government resources, higher prices to consumers and inefficiencies forced on U.S. industries is beyond calculation. We note that the ITC recently estimated that the President's so-called Voluntary Export Restraint Program on steel resulted in steel prices in the U.S. which were 25 to 56 percent higher than foreign prices in early 1985, and will cost U.S. exporting industries $15.7 billion in lost sales through 1989. The overall cost of import controls in 1984, for 19 U.S. industries, was

a staggering $56 billion, according to the Institute for International Economics as reported in Business Week.

One might argue that these costs were acceptable if in fact these procedures, and the import restrictions they result in were successfully ridding the market-place of "unfair traders" as defined by U.S. law, international agreement or popular mythology—and if the U.S. trade position were improving. However, the opposite appears to be the case. Certainly there has been no discernable effect on our merchandise trade balance, nor any diminished cry for protection from those domestic industries which have sought and obtained the greatest amount of protection. On the contrary, these are the very interest which are leading the effort for still more "reform" of the trade laws. By reform, of course, they mean revising definitions of what is "unfair" to include a wider range of commercial and governmental practices, as well as additional procedural burdens on legitimate international trade. So, there appears to be absolutely no empirical evidence that U.S. trade laws, after constant "tightening up" over the past dozen years, have had any significant effect on U.S. competitiveness. In fact the only group which has obviously benefitted from all this legislative activity in the trade area has been my brethren at the bar.

Of course, spokesmen for interests seeking further legalized protectionism will maintain that the failure of these industries to regain competitiveness, despite past U.S. government action on their behalf, results from an unwillingness on the part of the executive branch to enforce the laws properly—as Congress intended them. Anyone close to U.S. trade law administration knows this is complete nonsense. If any bias exists in trade law administration it is clearly in favor of domestic petitioners.

The basic problem which these interests, and most often the Congress and executive branch fail to acknowledge (by their actions, if not their words) is that the deterioration in the U.S. trade position has little, if anything, to do with foreign "unfair trade practices" and everything to do with U.S. domestic policies and industrial practices. I know of no objective observer with expertise in matters of international commerce who supports the notion that "unfair trade practices" by our trading partners have been a significant cause of the deterioration in the U.S. trade position. Certainly, I do not need to call to this Subcommittee's attention the perverse affect that U.S. fiscal policies and the decline in productivity growth have had on the competitiveness of U.S. products. You have heard this before and often from economists of every persuasion. Too often this body and the U.S. government as a whole have ignored the question of how to create a stable macroeconomic environment for growth and for encouraging the competitiveness of U.S. industry when passing legislation or setting policies. Similarly, industry and labor have often ignored efficiency and cost control in order to achieve other objectives.

No amount of tinkering with the trade laws will restore comparative advantage where it has been lost due to misguided or non-existant policies. On the contrary, the mistaken emphasis on the alleged unfair trade practices of our trading partners as the cause of the decline of certain U.S. industries has prevented the Congress and executive branch from considering actions which would assist these industries in meeting competition, instead of trying to hide from it.

The bottom line, in my view, is that this Subcommittee and this body should reject further amendments to U.S. trade law at this time. There is no evidence that any of the proposed changes will provide a net benefit to the U.S. economy, while further amendments will certainly cause continued uncertainty and increased bureaucratic interference in the international market place.

If the U.S. abandons the multilateral system to pursue unilateral solutions to complex international trade issues, that system will cease to exist. Unilateralism can take many forms—tariff increases, quota restrictions, voluntary restraint arrangements coerced by threats of more restrictive actions, or legal protectionism which attempts to disguise the isolation of national markets by creating complex legal procedures to redress alleged unfair trade practices. The results will inevitably be the same—the shrinkage of the world's economy and a lower standard of living for all.

I think it is important that the Subcommittee understand that the rest of the world does not necessarily agree with our perceptions of what constitutes fair and unfair commercial practice, of what "a level playing field" looks like. Many of the practices proscribed by pending legislation, and many of those defined as "unfair" by existing statutes, as presently interpreted, are not universally considered to distort the market place. Some are generally accepted commercial practices. In some instances U.S. practices can be considered in violation of our own standards. Often the procedures and practices followed in the administration of these statutes are so obscure and contrary to normal business practices that legitimate businessmen have

absolutely no way of knowing beforehand that they are vulnerable under U.S. law. Once they are enmeshed in these proceedings, it may take years before they can extricate themselves, no matter how uninvolved they may have been in any unfair practice. Often those most affected are American businessmen who must import components or raw materials in order to maintain their international competitiveness with foreign finished products. Under present law they can literally face bankruptcy because of arbitrary decisions by low-level bureaucrats. Every expansion of the scope and complexity of these laws increases the opportunity for administrative meddling in the commerce of the United States. Perhaps the most perverse effect of the growth of "legal protectionism" in the U.S. has been to increasingly place in the hands of private individuals and interests, who stand to reap significant economic rewards by the filing of petitions no matter how unmeritorious, the means to disrupt both our economic and our political relationships.

Few of the issues one must face in analyzing a trade dispute are black and white. Our society is one which depends upon its legal system very heavily for conflict resolution. Others do not share this approach. We must therefore curb our natural inclination to attempt to resolve legitimate international disputes by imposing our system and our solutions on others—lest whatever consensus has been developed over the past 40–50 years evaporates with nothing to replace it. We must also acknowledge that, just because other nations practices are different from ours, they are not per se "unfair," and that the principal means of dispute resolution in the international trade arena must continue to be negotiation, not unilateral action, whether sanctioned by statute or not. Finally, we must recognize that we are quickly moving toward "administered trade" in this country—a situation in which bureaucrats in administrative agencies of the U.S. government decide what products will flow in international commerce and how much they will cost. While we are deregulating our domestic economy, we are moving in the opposite direction with the increasing segment of our GNP accounted for by foreign commerce.

In conclusion, Mr. Chairman, our trade laws are in need of a major overhaul, but thus far neither the Congress or the executive branch is considering how to change them to avoid legal protectionism and to foster domestic industrial efficiency. Our existing laws and the amendments being considered are generally anti-competitive. We need to start from scratch to assure that these laws are truly remedial and procompetitive. In the meantime, let's not make them any worse than they already are.

Thank you.

Chairman GIBBONS. Thank you.

Mr. Ehrenhaft.

STATEMENT OF PETER D. EHRENHAFT, ESQ., WASHINGTON, DC, ON BEHALF OF POLFOODS, INC., AND OTHER IMPORTERS OF PRODUCTS FROM THE POLISH PEOPLE'S REPUBLIC

Mr. EHRENHAFT. I am Peter Ehrenhaft, presently a partner in the firm of Bryan, Cave, McPheeters & McRoberts. I was privileged to serve in the Treasury between Messrs. Suchman and Horlick and therefore had an opportunity as well to know from the inside how these laws operate. I also had some considerable experience sitting here, as did Mr. Kaplan this morning being grilled by the committee on what we administrators were doing to enforce these laws.

I have been in practice in Washington since having left the Treasury. Although I am now privileged to represent the importers of Polish products, and it is on their behalf I am here today, my practice has not been overwhelmingly in this field because I have found that representing almost anybody in this field is not a very satisfying experience. If you represent American petitioners, you always have clients who are dissatisfied with the relief they get under these laws—probably with good reason. If you represent foreigners, and you win the case, they ask, "Why was I subjected to these proceedings? The American Government vindicated me." God

forbid you should lose the case. Then they say, "my God, I lost the case and still have to pay your legal fee." It is a no-win situation for the lawyer.

Chairman GIBBONS. In that case, I would ask for an advance.

Mr. EHRENHAFT. That is hard to do.

Chairman GIBBONS. Maybe you should operate then on the accrual basis.

Mr. EHRENHAFT. Our panel was asked to address the problem of nonmarket economy countries.

Although I would be happy to share with you my thoughts on a lot of other issues, let me focus on that point in particular. I am particularly conscious of your desire to have some proposals in this area, after having heard your earlier remarks to Mr. Kaplan.

I am afraid my response will not go in the direction you are looking for. I suggest to you, Mr. Chairman, there is no evidence available in the record today that imports from the nonmarket economy countries are a significant threat to U.S. industry. They are no threat today and they are a very unlikely threat tomorrow.

As you know, the ITC prepares a quarterly report concerning the trends of trade with these nonmarket economies.

Chairman GIBBONS. Did you ever try to convince the textile or garment industry of that?

Mr. EHRENHAFT. I think they have a problem with regard to China, which, I suppose is the country to which you are referring. But I am not sure it is a problem with many other countries of the world that are regarded as NME's. I guess the real question becomes the extent to which we can or should provide remedies to preserve an industry here that for a variety of reasons finds difficulties competing with foreign imports.

Clearly, the underlying philosophy of our trade law is sensible: To try to preserve comparative advantage for whatever country that has it, and that includes the United States. If we have the competitive ability to make something with comparative advantage, we should do so and prevent the import of subsidized goods or unfair trading.

As previous speakers have said, and as you well know, those who seek the kind of relief that these statutes provide, frequently no longer have the comparative advantage that the law contemplates. They are seeking to throw sand into the gears of change. What we really need is something in the direction that Fred Bergsten was talking about this morning, a method of enabling our economy to adjust to change in a humane and sensible way.

In that context, the imports are just the smallest grain. As you know from recent statistics released from the ITC, it could identify only 18 products, and all of them relatively minor, other than oil, that had a combined import penetration of 1 percent of the U.S. consumption. There are only four that met the criterion of growing significantly up to a 15-percent increase in value in their imports. The fact is that we have a trade surplus in our trade with the nonmarket economies, including the Chinese. If you take away oil imports, which I guess many would regard as vital to the American economy, the total import picture from all of these countries is something like 1.2 percent of the total $343 billion worth of goods and services that we imported last year. It is a pittance, and I sug-

gest to this committee that to spend a lot of energy and time in thinking of new and imaginative ways to deal with this problem while the larger problem of the competitiveness of our economy is not addressed, is a misallocation of your own resources. You have got to address the larger adjustment problem. That is the real problem. The import of golf carts and work gloves and clothespins and candles—the products coming from those NME countries—are not a real problem that you ought to be addressing.

I would also suggest, as has been mentioned this afternoon, the existing laws, to the extent that you need laws to deal with these countries, could work if properly applied. All of these laws are, unfortunately, very complicated. You have required in the application of dumping and countervailing duties individual transactions be examined. If you are talking about something that is not important, knitting needles or candles or some small commodity, you perhaps you can do that even in the short time period allowed by the law.

If you are talking about steel products coming in in thousands and thousands of transactions, as we quickly learned with the trigger price mechanism for steel, as you remember we had when I was in the administration. The administration is essentially overwhelmed by the complexity and the enormity of making these transaction-by-transaction of comparisons. I don't think that making these procedures either faster or more complex is an answer to the problem they are supposed to solve.

I would just like to add that the famous "golf cart" rule that I had a hand in developing could provide an appropriate and fairly simple way of administering the antidumping law to nonmarket economy countries. I was very disappointed to hear one witness this morning say when he went to the Polish producing company, he could not find any records, and that the producers had no idea of their costs. I would say that is not really a fair comment. I think that we were able to ascertain fairly well from rather extensive records, which the Polish producers made available to the U.S. Government inspectors, a very complete record of the actual inputs of production. That method of valuing the product, looks to valuing them either in a free market economy or, I would suggest, to the extent those inputs represent purchases in U.S. dollars or convertible currency whose values could be used as such. The rule provides, I suggest, a very useful and administerable method of establishing the fair value of the products coming from those countries.

I would also urge the committee to wait and see with regard to the countervailing duty law. Do not amend that law until the Court of Appeals for the Federal Circuit has had an opportunity to rule on the case presently before it.

In sum, Mr. Chairman, I believe the facts do not support a change in the present laws as they are applied to nonmarket economy imports. Above all, I think that is a critical flow in the trigger price mechanism which is the essence of one of the ideas that the administration has been proposing. It is a very unworkable and unfair method of attempting to improve these laws.

To tinker further with the laws would be politically unwise, would not continue to bring the nonmarket economy countries into the main stream of the world trading system as we are attempting

to do, and I don't believe it would provide American importers with the kind of protection that they really need.

I would just add one final observation. I was unaware until this afternoon of Mr. Verrill's suggestion of a possible new look at article XVII of the GATT as a basis for dealing with imports of nonmarket economies. I think it is a very imaginative idea. I am not sufficiently familiar with the article to say it would provide all the answers, but I commend it to you as a direction by which a more productive method could be made rather than still elaborating further and making more complicated our already existing arsenal of laws.

Thank you very much.

[The prepared statement follows:]

Statement of
Peter D. Ehrenhaft
Submitted on behalf of
Importers of Products from the
Polish People's Republic
on
Trade Reform Legislation

99th Cong., 2d Sess. (1986)
Before the Subcommittee on Trade
of the House Ways & Means Committee

April 15, 1986

I am Peter Ehrenhaft, a partner in the firm of Bryan, Cave, McPheeters & McRoberts. From 1977 through 1979, I was the Deputy Assistant Secretary of the Treasury responsible for the administration of the antidumping and countervailing duty laws.

In my private practice since my tenure with the Treasury Department, I have had the privilege of counseling certain importers of Polish products, in particular, Polfoods, Inc. in New York City. It is on behalf of Polfoods and other importers of Polish products that I present this statement.

My testimony will present three main points:

1. You have no evidence that imports from nonmarket economies are a significant threat to any U.S. industry. They are no threat today and are a most unlikely threat tomorrow. The total imports from all the nonmarket economy countries in 1985 was $5.8 billion of which 26% was oil. Exclude oil, and they amount to only 1.2% of the $343 billion worth of total U.S. imports last year. And note that the United States has a trade surplus with the NME's of $1.2 billion.

2. You have no evidence that even if there were a threat, the present laws could not adequately deal with it. The problems with the present laws are not in their text, but in their administration. Given a fair reading and proper application, they could do the job.

3. The legislative proposals before you do not solve the "problems" presented by imports from nonmarket economies. If adopted, they would violate the GATT and further strain our relations with the NMEs for no good reason.

A. Recent History

Since the 1974 Trade Act, Congress has been preoccupied with what it styles "trade reform." As many of the members of this Subcommittee will recall, I have come before you on several occasions to address various pieces of legislation then believed to be the reform needed to correct the perceived imbalances. During the period since 1974, U.S. trade has grown in absolute terms. But the U.S. percentage of world trade is shrinking while our balance of trade -- and now even our balance of payments -- have been in deficit and growing in that direction. Perceptions abound that the shrinking U.S. piece of the world trade pie and our mounting trade deficits are the results of the "unfair" trade practices of our trading partners. The United States has responded to these problems on several fronts:

-- Congress has attempted to "strengthen" the U.S. trade laws by making antidumping and countervailing duty procedures more "judicial" and on a faster track;

-- The U.S. Trade Representative has been an active wielder of carrots and sticks, promoting new agreements on trade practices to resolve trade disputes and initiating unprecedented numbers of claims that our trading partners are not behaving in accordance with the internationally agreed rules;

-- Both the Congress and the President have sought new ways to take measures against the "unfair" practices of our trading partners and to secure access in foreign markets for our goods.

Now in the 99th Congress, numerous "trade reform" proposals have been introduced, and this Subcommittee is considering the preparation of yet another "omnibus trade reform bill." Part of that package may include new measures to apply the trade laws more "effectively" to imports from nonmarket economies.

My testimony today will repeat themes I have advocated in past appearances before this and other Committees of the Congress. I will not provide you with suggestions for sweeping reform. In fact, my message is quite simple. The trade laws now in place, if properly applied, provide a viable mechanism for dealing with imports from nonmarket economies.

B. Imports from nonmarket economies are not a significant threat to any U.S. industry.

Quite in contrast with its trade with "market" economy countries, the United States enjoys a trade surplus with nonmarket countries as a group, and evidence from Commerce Department statistics suggests that this status will continue.

The 1974 Trade Act assigned to the ITC the responsibility of monitoring imports from the nonmarket economies. As you are aware, since 1982 the Commission has been using an automated trade monitoring system designed to identify nonmarket economy imports that grow rapidly and, by measuring market penetration, those that are likely to cause disruption in U.S. industries. In its most recent analysis, the ITC identified only eighteen products that met the combined criterion of at least one percent penetration from a NME source and at least ten percent penetration from all sources. Of those eighteen products, only four met the ITC's "growth criterion" of at least a fifteen percent increase in value.

A look at the statistics in a broader historical context reveals that trade between the United States and nonmarket economies excluding China is not significantly higher than -- indeed it is at almost identical levels as -- trade between the United States and these countries in the late 1970s. The small number of antidumping cases involving NME imports as a percentage of all antidumping cases initiated by domestic interests further illustrates this point.

These statistics amply demonstrate that the "problem" of nonmarket economy imports is no problem. There are no significant import penetration levels; no staggering increases in products imported from any one nonmarket economy -- or for that matter all nonmarket economies as a group.

C. The existing system of trade laws is capable of accommodating the special issues presented by imports from nonmarket economies.

The U.S. trade laws should promote a policy of nondiscriminatory treatment of its trading partners. Such was the intention of the drafters of the MTN Codes, and the importers of Polish products I represent urge this Subcommittee to keep that policy uppermost in its consideration of trade legislation before it. We believe trade can be conducted between Poland and the United States on an apolitical basis and that sensible -- albeit occasionally "special" -- rules may and can be applied to facilitate the process, recognizing the difference between the two countries' economic systems.

1. Section 406.

Although a persuasive case has yet to be made that a special law is needed to deal with imports from nonmarket economies, Section 406 of the Trade Act of 1974 is in place to remedy any "market disruption" from "Communist countries." In fact, Section 406 has rarely been invoked. I suggest to you that Section 406 is based on the improbable hypothesis that an otherwise struggling economy could and would marshal the

resources necessary to effect a rapid surge of imports significant enough to disrupt a U.S. market.

This phenomenon has rarely, if ever, been observed in the real world. In the single Section 406 case in which Polish goods were involved, the ITC found 5-1 that no "market disruption" within the meaning of the law occurred.

It seems clear that Section 406 is based on politics, not economics. The law applies not to "nonmarket economy" countries generally, but to "Communist countries." Moreover, its terms are loosely stated and its effects are uncertain. We believe that Sections 201 and 301 are more than adequate to deal with surges of imports from <u>any</u> country, and we would prefer to see Section 406 eliminated altogether. But the Subcommittee knows that Section 406 is nevertheless on the books and may be invoked in the unlikely event that it is needed to ensure relief for a domestic industry "disrupted" by a surge of imports from a "Communist country".

2. <u>Antidumping Law</u>.

This Subcommittee has heard proposed fundamental changes to the U.S. antidumping law as it applies to nonmarket economies. Having myself wrestled with the problem of applying the antidumping law to imports from Poland, I was responsible in large part for the adoption of what is wryly called the "Golf Cart Rule." I can, thus, fully appreciate the frustration in dealing with this problem. Nevertheless, I stand by the approach contemplated by the "Golf Cart Rule" and

reiterate my opinion that the Department of Commerce should implement the rule we adopted at Treasury -- and which the GAO has endorsed as the most viable of the alternatives.

The rule that emerged from the Polish Golf Cart case responded to our conviction that the antidumping law and the Treasury Department's handling of the problem before 1977 were not adequately thought through. At the time, efforts were made to obtain the "fair market" value of the Polish golf carts from the prices at which an obscure Canadian producer sold a small quantity of vaguely comparable factory carts. The Polish product, however, was made and shipped by an enterprise whose sole commercial market was golf course operators in the United States. There were no golf courses in Poland and no real sales elsewhere. The results of the investigation, using the Canadian prices, were unsatisfying to every participant in the case. And when the Canadian producer went out of business, it was, in any event, necessary to try a new approach. Treasury determined that any new rule had to be

- fair to, and non-discriminatory against "state-controlled economies";
- consistent with existing principles of the antidumping law; and
- perhaps most crucial, "administrable" by government officials (and, of course, the parties concerned).

The rule adopted by Treasury met these tests -- at least based on a "least worst" criterion. It allows a producer in a state-controlled economy to utilize its own factors of

production and to value them in a market economy of comparable economic development to develop a "constructed value," as that term is generally understood under the antidumping law. The rule currently applied by the Commerce Department, however, permits this constructed value approach to be used only if more "traditional" techniques in calculating fair value, albeit through surrogates in market economies of comparable development, are inadequate or unsuitable.

The result has been that in almost all of the cases decided since 1979 in the initial stages, the prices and costs of third companies, in countries other than those in which the goods were produced, were used to establish the "fair value" of the merchandise under investigation. And in some cases, the fair value was determined by averaging import prices from all third country suppliers.

In my judgment, this is not sensible policy. It flies in the face of legislation enacted as a part of the Trade Act of 1974 with respect to antidumping investigations concerning merchandise from other than the so-called state-controlled economies. Then, Congress specifically rejected as appropriate the utilization of third party prices and costs for establishing the "fair value" of a particular respondent's merchandise. It recognized the inability of the respondent to exercise any control over the prices and costs of the third party being used. Congress wanted to preserve for the respondent the ability to assure itself that it is not dumping (without forcing the respondent to retreat from the market entirely --

which is surely not the aim of the law). Use of a "third party price or cost" rule is no less inappropriate for NME exporters.

Not only is the application of third party pricing or costs to a respondent unfair to the exporter from the state-controlled economy (and thus violative of what I think is the first principle of "fairness" that ought to apply), it is also in many cases absurdly difficult to implement by the government. A report from the GAO amply documents this fact. I can also attest to it from personal experience: When I was at Treasury we sought the prices of the U.S. manufacturers of golf carts -- presumably the parties with the greatest interest in furnishing that data and most familiar with the reasons why it was needed and how it would be safeguarded and used. But even they were reluctant to give the government those facts. How much harder and more frustrating it is to search around the world for producers in other countries to supply facts about their sales and costs for a proceeding in which they have no direct involvement or even interest. Moreover, in one such proceeding, cost and price information was supplied by cooperative Finnish producers who thereafter found themselves subject to an antidumping petition based on the data they had provided. How many more cooperative surrogates does Commerce now expect to find? The use of third party prices and costs has become, if it was not earlier, unadmissible. It ought to be scrapped.

If it were scrapped in favor of the simulated constructed value approach that Treasury proposed, and that the

GAO has endorsed, is that a rule that meets the principles I mentioned earlier? I suggest that it does. It fairly allows a particular producer to attempt to demonstrate that its prices are not below its costs, and thereby gives that party some ability to control its market behavior. It also allows the producer from the state-controlled economy to try to show that it has a comparative advantage in making and selling the goods or services in question. Verification of input factors is no more difficult than the verification of other information routinely reviewed by Commerce or Customs officials in antidumping and other cases. And "pricing" these factors in a surrogate economy is not necessarily a difficult task - particularly if the burden is placed on the respondent to demonstrate a technique and selection process.

If it is a sensible rule, why is it not being adopted? Criticism, most notably from my successors, has focused, first, on the notion that a market economy of "comparable economic development" can be found in which the pricing aspect of the exercise is "reliable." I suggest this criticism misses the point. It is not necessary that the Administering Authority be satisfied that every criterion of "market development" be identical or even similar for the purpose in question. A rough comparability, to which most responsible economists would agree, is sufficient and, indeed, exists. The countries of Eastern Europe are, in many ways, at a stage of economic development not dissimilar to some of the market economies of the Mediterranean basin. Comparisons of

the costs of labor and energy and capital in those lands provide an adequate guide to market economy costs of those same factors in Poland or Hungary. Moreover, to the extent that some of the inputs a particular state-controlled enterprise buys are obtained on world markets in convertible currency, there is no reason not to price those inputs at their actual prices. And as the economies of some of these countries move toward a "reform model," with less rigid central planning and even more freely convertible currencies, it may even be possible to use all of the internal prices and costs of those producers.

Criticism of the rule has also focused on the alleged difficulty petitioners would have in stating an adequate case of dumping if they were compelled to develop the imagined costs of an Eastern European producer and then to "price" those costs in some undetermined third country. In fact, I suggest that the petitioner has, in some respects, an easier time in attempting to establish sales at less than fair value in such cases than in situations in which he must seek price data on foreign home market transactions. A projection of his own costs and factors inputs, suitably adjusted for the foreign locale from published information, is precisely what the existing regulations contemplate for such cases. It ought not to be more difficult to apply in the case of Polish wares than in the case of Swiss or French merchandise.

A third criticism of the simulated constructed value rule stems from fears that the records of producers in

state-controlled economies will either be unavailable for inspection by U.S. Government verifiers or will be unreliable even if examined. To the extent a producer (or its government) declines to permit access, the law and regulations have an ample answer: the "best evidence rule." The situation is no different than any other in which cooperation from respondents is not forthcoming. With respect to reliability, no published reports suggest experience with untrustworthy records in such countries. However, it can be said that in at least two cases in which the input records of the state-controlled economy producers were meticulously reviewed by Treasury and Commerce personnel - Golf Carts from Poland and Montan Wax from the German Democratic Republic - the records were found to be more than adequate.

A fourth objection suggests that since the state-controlled economy may attempt to foster one type of production rather than another, it may "unfairly" be able to demonstrate real comparative advantage in the favored industry. But why is this unfair? Our entire trading system is supposed to be based on comparative advantage. We should encourage it. It is sensible for the Hondurans to grow bananas, just as it is unreasonable for Icelanders to try to do so. As I have said before, only to the extent that nonmarket economy producers are, in effect, growing bananas on the ice cap in a hot house subsidized by tax revenues, do we have cause to complain. But then there is ample scope in the administration of our existing law (even without the use of the countervailing duties law) to

find margins of dumping, since obviously, their total production costs will be excessive. If, however, they do have a comparative advantage, why should American consumers be denied the ability to buy their goods? If there is any "unfairness," it is to our own people!

Finally, the rule is criticized as too hard to administer. There may be situations in which the search for input factors becomes difficult. But the solution to ease of administration should not be the adoption of the rule suggested by some for finding as "fair value" the average price of all of the suppliers to the U.S. market, whether foreign or domestic. Clearly, if ascertainable, that price might be a convenient bench mark for exporters in, say, Poland, to follow. We should even support its adoption, as long as the exporter would have the option to try to prove a lower "simulated constructed value." Unfortunately, I do not have much confidence that it will be easy -- or even possible -- to find the "average price", and that is one reason I find the proposed legislation troubling in its exclusive reliance on this principle.

To the extent that merchandise is truly fungible -- the way bulk chemicals or other commodities may be -- the rule may well be workable. But even with respect to such goods, there are differences in grade, packing, terms of delivery, length of contract and the like that may make direct price comparisons with imported merchandise difficult -- at least without making a number of what inevitably become arbitrary adjustments. But as one deals with more fabricated and

differentiated merchandise, the notion that one can find the "average price" in the U.S. market becomes virtually impossible. One might find ranges of prices describing classes of roughly similar goods. But even with respect to a canned ham, there are differences in quality -- of water content, of fat, of the "taste" based on the solution in which it was cured or the food eaten by the swine from which it was made -- that affect price. And with manufactured items there are often non-functional differences in appearance and style, in warranty and after-sale service terms, in delivery times and spare part availability, just to name a few, that make the contemplated "to-the-penny" comparison untenable.

There is also the question of fairness. To impose such a rule on nonmarket economies is to render it impossible for them to ever know if their sales may be subject to antidumping duties without a constant review of facts about the U.S. marketplace that are either not known or not knowable. Moreover, the rule assumes that no nonmarket economy producer can ever properly be the lowest-price supplier to this market. The Golf-Cart case, alone, showed this was an untenable position. This notion gives rise to our final objection: imposing such a rule may well be GATT violative by imposing different -- and more difficult -- standards on some, but not other, trading partners.

In sum, I suggest the Committee defer any action on this issue.

3. Countervailing Duty Law.

Pending proposals for "reform" of the countervailing duty laws as they apply -- or don't apply -- to imports from nonmarket economies, are likewise premature and, for that reason, inappropriate. We recognize the uncertainty created by the Commerce Department in the Czechoslovakia Carbon Steel Wire Rod countervailing duty case. We are also sensitive to the dissatisfaction of many, myself included, with the subsequent opinion of the Court of International Trade in this matter.

It is not unfair to suggest that no one knows better the frustration of this state of flux than the importers of Polish products on whose behalf I am speaking today. But as we meet today, the Continental Steel case is pending on appeal before the Federal Circuit Court of Appeals. That court has yet to issue its opinion on this case and it should be given the opportunity to do so.

The Department of Commerce, in its final determination in the Czechoslovakian Wire Rod case, found that, as matter of law, "subsidies" cannot be found in nonmarket economies. Therefore, countervailing duties cannot be assessed against imports from those countries. Commerce conceded, however, that because of the express language of the statute, countries with nonmarket economies were not exempt from the countervailing duty law.

In an opinion that can at best be described as unresponsive, the Court of International Trade reversed the Commerce Department and remanded the determination for further

action. The court relied heavily on the literal language of the statute and its obvious lack of any express exception for imports from nonmarket economy countries. But it ignored the realities of what it termed "nothing more than general economic characteristics" of nonmarket economies. In so doing, it failed to provide any guidance to the administrators on the very issue in controversy. It failed to suggest how a subsidy could be calculated in an NME setting.

While I may agree with the result reached by the Department of Commerce in the Wire Rod case -- indeed this has been the premise of my proposal for adjustment in the application of the countervailing duty laws to these countries -- I believe a change in the law at this time is inappropriate. This Subcommittee should adopt a "wait and see" approach pending the outcome of the Continental Steel case on appeal.

* * * *

These hearings evidence the frenzy of effort to "do something" to vent the frustration of this country with mounting U.S. trade deficits. Few people speak up on behalf of nonmarket economy countries, making their imports too easy a target for the "do something" proponents. But the facts simply do not support a need for change in the laws as they are applied to nonmarket economy imports. Excluding oil imports -- which is altogether another subject -- they amount to less than 1.5 percent of all U.S. imports. This country already enjoys

surplus trade margins with its NME trading partners. If the aim of this Subcommittee is to somehow reduce the threatening levels of the U.S. trade deficit, then you have sound economic reasons, not to mention political reasons, to foster good relations with our NME trading partners. To further burden those relations would be counterproductive, would serve no general political purposes and would yield no tangible results. There is precious little -- if any -- evidence that the present laws, if fairly read and properly applied, cannot adequately do the job.

Peter D. Ehrenhaft is registered with the Department of Justice under the Foreign Agents Registration Act of 1938, as amended (the Act), as an agent of Polfoods, Inc., 666 Fifth Avenue, New York, New York.

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Chairman GIBBONS. I appreciate your bringing up this subject. How in the world do you handle the position this chairman finds himself in. I have a hell of a time gathering one-third of the votes much less a majority. We have to think there is some validity to the democratic system where people get together and vote. When you have a time getting a third of the people together to sustain a veto or something of that sort, you know unless you do make some accommodations to those who are "unreasonable" you are going to get slaughtered. What do we do?

The biggest complaints are unfair practices. I realize any time you make a statement of unfairness, you are being self-righteous, but obviously what we are doing does not comply with what the average American feels is a just situation. Kick it around awhile.

Mr. HORLICK. The first thing is to focus on the export marketers. There is a constituency there of exporters. That is where your votes are for keeping the system open. That depends on other countries being willing to open their markets and often they have to be persuaded to do so.

On the second aspect of import sensitivity, I think personally—and I suspect Mr. Bergsten has written this—there is no way of avoiding the fact that this surging complaint about unfairness has been coincidental with the rise of the dollar. I know you have all heard that for 3 years, but it is true. Most trade problems really have their roots in bigger picture things. You all get hit with the complaints which you all cause in your trade capacity—I will leave out the tax system.

The only real solution obviously is a better macroeconomic situation but, in the short term, in terms of what you want in dealing with unfairness is not to prejudice the overall economic welfare too much for any one industry and the reason for that is not being nice to foreigners but what you give with one hand to some you are taking away from others. A third of our total imports are tied up in managed trade to which Mr. Suchman referred. When you start tying up that much of your economy, you are freezing it and dictating investment choices. You are saying people should invest in certain industries because they are protected. I am not telling you anything you don't know and, having said that yourselves for a long time, I am just worried about the unfairness issue when it is tied to things like the dollar. I realize that does not give you very many votes.

Chairman GIBBONS. I will agree 80 percent of the economy is mismanaged but that does not solve the problem. I realize you can't solve the problem just through the manipulation of these trade laws that we have here before us today and over which this committee has jurisdiction. That still does not give us a license to sit here and ring our hands.

Mr. HORLICK. There is a need as pointed out by earlier witness for an adjustment program. People will be hurt by changes and they understandably don't feel they should be hurt for the good of the whole.

Mr. EHRENHAFT. I want to mention in that regard that I think the main problem that this committee faces is the fragmentation of trade as a phenomenon separate from other kinds of changes in our marketplace.

I told you once before, but it may be worth repeating a story about a fellow I once met who made slide rules, he said in 13 months his business disappeared. His company went bankrupt, all his employees were laid off because hand-held calculators came on the market. They were better and cheaper. If slide rules from some foreign country had been imported, there would be 40 different remedies he could have used to fight getting out of the slide rule business. Because he was faced with a technological change, there was nothing the Government could do for him and his workers.

I think separating trade as a problem is mistaken. What we face is not a separate problem. It is one of the many kinds of reasons for change in the economy and the real direction of our policy has to be accommodating to whatever causes the need for change, whether it be trade, technological invention, natural disasters, consumer tastes, and so on. Adopting a comprehensive mechanism for adjusting to that problem is really the challenge for the committee.

Mr. VERRILL. The suggestion has been made that the trade laws are principally used as a way of dealing with obsolescence and that type of thing in industry, and that the focus is really misdirected.

I would like to bring to the committee's attention my view that in some industries, at least those with which I am most familiar, that is not the case. I represent a number of steel companies. None of them have names any of you have probably ever heard of, but they make about a fourth of the steel produced in the United States. One of those mills, Chaparral Steel Co. in Texas has just achieved a milestone. They produce long steel products, structurals, and the like with 1.6 hours of labor content per ton of finished product produced. The dimension of that achievement is this. That figure includes all the time that labor is involved in producing a ton of steel from the day the scrap comes in the front door until the finished product goes out the back door. It includes an allocation of management time. It includes salesmen's time. It means, even at union rates, the cost of producing steel at Chaparral is influenced by a labor cost of under $30 a ton. That cost is less than the cost of shipping steel to any port of the United States from a foreign destination. Thus lack of productivity is not a Chaparral problem. Moreover, most of the countries that export steel to the United States, make that steel with a very substantial amount of scrap produced in the United States, exported to that country and then sent back here in the form of a finished product. This further increases transportation costs.

In the context of companies like Chaparral you might ask why is there any problem? What possible trade difficulties can they confront?

I believe that these companies and the sector of the industry they are engaged in demonstrates one of the reasons why fairness in pricing and trade is very, very important. Part of the reason that fairness is important is that Chaparral and the other companies are competing with products that are subsidized in the country of production. Clearly, that ought to be addressed in the trade laws and ought not be forgotten as a legitimate and true objective.

Second, with respect to dumping, people often ask me why on earth would anybody conceivably dump? Dumping is obviously selling at a distress price and you can't do it forever. The reason in

large part or at least as far as my experience in steel is concerned derives from the fact that we can't sell steel in most countries that export it here at very low prices. Chaparral Steel Co. in Texas can't take a structural shape it produces as efficiently as it does and sell it in Mexico. Chaparral can't sell in Venezuela or Brazil or a lot of other countries that keep efficiently produced steel from the United States out of their markets. At the same time, because of the local protected prices in those markets prices are at levels that make it extremely profitable to sell at home and extremely profitable to dump in the United States.

I concur with Gary one of the things we need to focus on, in addition to the fairness element, is the opening of the foreign markets. If that occurred, you would eliminate one of the rationales for dumping.

Mr. HORLICK. I don't think there is any argument you do want to go after clear subsidies. The question is what is dumping? You don't have to comment, but I doubt Chaparral always sells at fully above allocated cost. This level playing field should be the same for everyone. There are rules that should be followed by everyone. The problem comes when you try to solve all companies' problems with those rules.

The reason people come to you about the antidumping and countervailing duty laws is in 1979 this committee made them nondiscretionary. The minute that passed, every lawyer in town looked for ways to fit their clients into the countervailing bond. Anyone with a problem is going to fit it into antidumping or countervailing duty. When they can't, he will come to you. Certainly there is a role for countervailing duty law.

Mr. SUCHMAN. A great fuzziness has developed as to what is unfair and, second, the distinction between fair and unfair trade remedies. I hate to keep harping on steel but it is the outstanding example. There you had a series of unfair trade practice cases which culminated in a fair trade practice case, if that is the right word, in the 201 finding which the President, by the way, found no injury in, and then set about to get voluntary restraint arrangements which had nothing to do with the unfair trade practices. Yet that was taken into account in USTR.

So what is happening is you are getting remedies that are not tied to the unfair trade practice. You are getting people coming in requesting 201 relief or 301 relief and saying it is based upon an unfair trade practice. In specialty steel, you had a case that started out life as a 301 case, was decided by the ITC as a 201 case and where the President took action under 201 saying he was correcting unfair trade practices. So nobody knows which end is up anymore. As a result, you get Chaparral which is an efficient producer getting a level of protection perhaps against imported steel to which it is not entitled because that level of protection is pertaining to fairly traded steel as well.

Chairman GIBBONS. After listening to you gentlemen, I come to the conclusion there is no way out of it.

Mr. EHRENHAFT. I can sympathize with the Congressmen who have to go back to the voters every 2 years. These problems are not solvable with the 2-year time period in which you have to go back to the voters. I think it would would be a mistake to suggest these

kinds of issues are solvable within those very short time periods. They are not. They require a more comprehensive, longer view.

Mr. HORLICK. Let's look at the half-full glass of water rather than the half empty. You have managed to get the administration to be considerably more active on the market opening access measures than it was for some years. I think you all ought to take credit for that. That is positive. People are taking it seriously around the world. It is going to be piecemeal, but those are gains that result from that kind of pressure. There are things that could be done on the adjustment side and I think there have been some very good legislative ideas introduced and there are some things that can be done on the 301 stuff. A lot of it requires activist trade policies that looks for what our trade policies should be and tries to get them.

Chairman GIBBONS. What has happened to America? I went out to buy a television set the other day. I could not find any American-made television set on the market.

Mr. HORLICK. Zenith and RCA are still the largest manufacturers.

Mr. SUCHMAN. They are not manufactured here. They are assembled here.

Chairman GIBBONS. You can't find an American-made tape recorder. You want to buy a little old electronic watch, you can't find one.

Mr. SUCHMAN. We still produce most of the world's commercial aircraft and we are still——

Chairman GIBBONS. I am wondering how much longer that is going to last. I have visited the Boeing plant. If you take the 707, the wing section is made in Japan. The wing sections are made in Washington. The tail assembly is made in Italy. The ailerons are made somewhere else. Depending upon what the consumer wants, you get either a U.S. engine or an English engine. That is not a really wholly American-made product by any manner of means. That is about the only thing we have left to talk about.

We don't even have any fertilizer business left in my area of the country. That is a pretty fundamental, simple business. It depends a lot upon freight from foreign countries. I can't believe that America is in this kind of position.

Mr. VERRILL. One of the problems I perceive particularly in products like fertilizer is the rise of State trading enterprises both in the nonmarket economies and the market economies. Frequently, the kind of decisions that go into the investment in a new facility are premised on welfare issues as contrasted to the kind of commercial considerations and market considerations that would dictate decisions by a producer in the United States.

That is why I proposed as one of the things you might do is to work on the meaning of commercial considerations in GATT article XVII. It is a provision that has been around for a long time. What it needs at this point it seems to me is some international understanding—or an understanding developed by the United States perhaps in the context of section 301—of when trading with these enterprises is commercially consistent and when it is not.

Mr. HORLICK. Those are the things to be looking at. We appreciate the difficult position you are in, but, for example, it is not going to be solved by cutting the time limits for dumping cases in half.

Mr. Verrill and I both showed in 1979 that you hurt domestics more than foreigners by cutting time limits because the cases come out the worst for them. The remedy is not aimed at making us more competitive. It is an effort to tinker with the law when the law is not a problem. Tinkering may give the appearance of action.

Chairman GIBBONS. Let's take the common tree which I have become an expert on. We have more growing days and better weather and better geography to grow a tree in than do our fine friends in Canada. Their labor costs are high. They are highly organized labor and the American lumber industry, as I have seen it in the Northwest, is in a disastrous shape, where the trees are cheaper, grow faster, and grow better. They are easier to extract from the ground and, if anything, the labor costs are roughly the same. How can I tell someone from that part of the country that we don't have a problem with our laws? Trees grow faster in the United States. They are roughly the same species of trees. Generally speaking, trees grow better here than in Canada with fewer cold days and everything else. Yet, for some mysterious reason, those trees just keep coming into the United States at very, very cheap prices. Something happened somewhere.

Mr. EHRENHAFT. Could it be the cost of the land and the demand for the land in United States that brings acreage costs higher here than in Canada? I am not an expert, but it just comes to mind as one possibility. The land might be very much cheaper in an underpopulated country such as Canada. That would probably be a significant factor.

Perhaps also our safety and pollution laws and the laws applicable to the transportation of these commodities might be more highly restrictive here.

Chairman GIBBONS. There is the Jones Act that sort of screws up part of that.

Mr. SUCHMAN. There was a time when we accommodated the different national systems through tariffs. Over the years, we have reduced those to almost nothing and have attempted too often the kind of protection we have been talking about through a series of ever more complex laws. Maybe what we need to do is rethink the idea that the way to run the world system is to eliminate all tariffs. There perhaps is a need in certain industries to put tariffs in place.

I certainly think they are preferable to the kind of uncertainty and arbitrariness and capriciousness we see in the application of some of the trade laws.

Mr. FRENZEL. Mr. Chairman, I arrived a little bit late and I am trying to catch up with the witnesses. I yield my time.

Chairman GIBBONS. Thank you, gentlemen. We appreciate your statements.

Our last panel are from the American International Automobile Dealers Association and the Automobile Importers of America

We will start with the American International Automobile Dealers Association and then go next to the Automobile Importers of America.

STATEMENT OF DONALD H. GRAVES, CHAIRMAN, AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION, ACCOMPANIED BY ROBERT M. McELWAINE, PRESIDENT, AND BART S. FISHER, COUNSEL

Mr. GRAVES. Thank you, Mr. Chairman.

I thank you for the opportunity of appearing before you. Appearing here with me are Mr. Robert McElwaine, president of our association, and Mr. Bart Fisher, counsel.

Chairman GIBBONS. We fought many battles together.

Mr. GRAVES. Mr. Chairman, I am Don Graves. I am a Nissan dealer in Los Angeles, CA, and chairman of the board of American International Automobile Dealers Association [AIADA]. We represent the interests of over 7,000 dealers and we have approximately 170,000 employees.

We have submitted for the record a full statement on our position regarding the draft trade reform law under consideration, explaining why we feel the proposed reforms to section 201 are counterproductive to U.S. interests and to our trade objectives.

In the interest of time, rather than digest those arguments in a few moments, however, I would prefer to relate to the committee the events that have taken place in the automotive industry since the last time we discussed trade in this room in March 1985.

Chairman GIBBONS. You are not going to tell us about all of those terrible price cuts, are you?

Mr. GRAVES. No. I feel those developments more than anything else I could say would illustrate the perils of the course in which I feel this committee is embarked and the benefits that accrue to our economy, the American consumer, American labor and business. When the private enterprise system is permitted to operate without Government interference, there is the free exchange of goods between nations.

One year ago, representatives of the Chrysler Corp. warned that lifting or loosening the trade restraints on Japanese imports would cost 750,000 American jobs. Without the restraints, they predicted the Japanese would usurp 45 percent of the American market. It is a fact. Our association's testimony predicted that a lifting or easing of the restraints would bring prices down. As more product became available, lower prices were predicted meaning increased sales, greater production and higher employment.

Mr. Chairman, who is right? It certainly wasn't Chrysler.

Increased availability of Japanese cars reduced the transaction prices for these vehicles and, for the first time in 4 years, brought price competition to the marketplace. The domestic manufacturers responded, and in July and August with price cuts in the form of subsidized 7.7 percent financing, the equivalent of $1,000 price cut.

In September, Detroit's Big Three sold more automobiles than in any single month in the industry's history. They reduced the Japanese share of the market all the way to 16 percent.

The year 1985 went into the record book as the greatest single year for the sales of motor vehicles in the United States. Sales increased by 1.2 million units over 1984, and the domestic manufacturers accounted for the majority of those additional sales. American manufacturers sold more than 12 million cars and trucks, one

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of their finest years ever. Production was up, employment was up, and sales by the supplier industries—steel, rubber, aluminum—to Detroit were up, too.

Today, a more reasonably positioned dollar on the international exchange markets is already working to bring our trade deficit more nearly into balance. We have had three price increases on Japanese cars in 6 months. As a consequence, they will rise again. Given a reasonable time, these changes will be seen in the marketplace and in our trade balance.

Our February trade deficit declined 24 percent from January and over 30 percent for March. Simultaneously, the Japanese Government is initiating a complete restructuring of companies and society in their relationship to reducing the savings rate and increased consumer demand. Amending our trade laws could well derail this promising development.

AIADA wholly supports new negotiating authority for the President. It is time for a new round of GATT negotiations. But to append such an authority to a so-called reform of our trade laws that would convert the escape clause into a blunt instrument of protectionism would send a signal to our trading partners that the intention of these new negotiations is not to open markets but to close them.

A little more than 1 year ago, Mr. Chairman, you said in this room concerning the 201 bill if we go into that room, we will come out with a great deal less than we went in with.

Mr. Chairman, that statement is as true today as it was then.

In today's atmosphere, it is impossible to amend that section of our trade laws dealing with relief from imports of fairly traded goods without turning it into virtually automatic protection for industries that find competition from imports an annoyance. So we urge this committee not to amend the escape clause because our trade laws are definitely not broke, and they should not be fixed.

Thank you very much, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF THE
AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION BEFORE
THE SUBCOMMITTEE ON TRADE OF THE COMMITTEE ON WAYS AND MEANS

The American International Automobile Dealers Association (AIADA) represents the interests of over 7,000 American automobile dealers and their approximately 170,000 employees. We are pleased to have the opportunity to participate in this comprehensive review of U.S. trade laws. Our particular concern is Section 201 of the Trade Act of 1974, also known as the "escape clause." For the reasons outlined below, AIADA urges the Congress to stand firm in the face of protectionist calls to revamp Section 201 to make its extraordinary relief more widely available. The views expressed herein are consistent with both the interests of our membership and the broader domestic and international interests of the United States.

Fair Versus Unfair Trade

Relief under U.S. trade laws is properly predicated upon a distinction between fair and unfair foreign trade practices. Achievement of the much sought after "level playing field" necessitates consistent opposition to unfair trade while keeping an open door to fairly traded imports. The need for a clear U.S. commitment to free trade is particularly important as the Geneva round of multilateral trade talks approaches. The United States initiated the preparatory process for these negotiations last fall and has taken an early lead in promoting an agenda which will result in increased trade liberalization. Any

sign of U.S. reluctance to compete in an open trading system will undercut our efforts to persuade other nations to dismantle trade barriers.

Pursuant to specific international standards, the United States already combats unfairly traded imports, primarily through antidumping and countervailing duty laws, Section 337 (for patent infringements and other unfair practices), and various customs fraud provisions. We believe that, with respect to imports, these laws adequately cover the range of foreign governmental and corporate activity which can reasonably be described as "unfair". The United States also combats unfair foreign practices that curtail U.S. export sales, artificially affect trade flows or violate trade agreements. Section 301, as amended in 1984, enables the United States to retaliate effectively against unfair practices of foreign countries that hinder U.S. exports. In recent months, the Reagan Administration has shown a willingness to rely heavily on this provision to combat foreign barriers to U.S. goods.

Import relief for U.S. industry is also available even in the absence of unfair foreign trade practices. However, such relief is constrained by international standards which permit only limited responses to fairly traded imports. Under Article XIX of the GATT, countries are permitted to "escape" from their international and bilateral commitments to allow time for domestic industries adversely affected by imports to adjust to changing market conditions. This relief can only be granted

temporarily and under extraordinary circumstances. The United States has taken considerable advantage of this special exemption for fairly-traded imports. There are at least six different U.S. statutory responses to fairly-priced foreign competition:

(1) the "escape clause", contained in Section 201 of the Trade Act of 1974;

(2) adjustment assistance to help firms, workers and communities harmed by the influx of imports;

(3) Section 22 of the Agricultural Adjustment Act, which is designed to deal with problems caused by agricultural imports;

(4) Section 406 of the Trade Act of 1974, which specifically addresses the issue of market disruption caused by nonmarket economies;

(5) Section 232 of the Trade Expansion Act of 1962, which is designed to limit imports which may impair national security; and

(6) import restraints on textiles permitted under the Multi-Fiber Arrangement (MFA) and the bilateral agreements negotiated by the United States pursuant to the MFA.

Section 201

Of these safeguards, the broadest-ranging and potentially most destructive to free trade is the escape clause mechanism found in Section 201 of the Trade Act of 1974. Section 201 provides for the imposition of temporary relief against increased imports which are a substantial cause of serious injury or threatened serious injury to a particular domestic industry. Section 201 is the result of recognition that

trade liberalization can result in difficult economic adjustment for particular sectors of the economy. Because relief is available when there is nothing "unfair" about the imports in questions, its use is properly limited to extraordinary circumstances where increased reports are the primary cause of serious injury and temporary import relief will both permit the domestic industry adjust and be in the overall national economic interest. Recently, several legislative proposals have surfaced which contain provisions that eliminate or handicap fairly traded import competition in the American market by relaxing the standards for obtaining relief under Section 201. The March 21 "Discussion Draft" produced by the Trade Subcommittee Staff contains a number of such provisions.

The basic premise behind these proposed escape clause reforms is that current law is not working. This perception, however, ignores the recent history of Section 201. A review of the cases the ITC has decided during the Reagan Administration demonstrates that the Commission made the appropriate determination and that the Presidential discretion has been exercised, as it should be, with due regard to the general welfare of the nation. In the past five years, 11 cases have been decided under Section 201. In six cases the ITC found that import competition was not a significant cause of injury. In two of the five remaining cases, the President proposed significant restrictions on the imported goods, namely, large motorcycles and specialty steels. In a third case--carbon steel--he resolved the situation

through the negotiation of voluntary restraints on steel imports. In two instances, involving copper and footwear, the President rejected the ITC recommendations; the Administration found that imposing restrictions on copper imports would eliminate more U.S. jobs in fabricating than it would save in mining. The President decided against the ITC recommendation on footwear on the grounds that protectionism would increase consumer prices and risk retaliation by our trading partners without improving the competitive situation of the domestic industry. He cited an estimate from the Council of Economic Advisers that quota relief would cost the American consumer nearly $3 billion over five years to support job creation in the industry. He also noted that through direct retaliation or eventual "compensation" under GATT, U.S. exporters would stand to lose approximately $2.1 billion.

AIADA was a major participant in the 1980 ITC automobile decision -- one of the most famous of recent escape clause cases. The action was brought by the Ford Motor Company and the United Auto Workers for relief from import competition from Japanese automobiles. AIADA participated in the long and arduous hearings and watched from an uncomfortably close position while the ITC wrestled with a complex factual situation and controversial political issue.

The ITC determination in that landmark case was eminently correct. The ITC had before it two unassailable facts: the U.S. automobile industry was facing severe economic

difficulties, and Japanese automobile imports had increased significantly. The key issue, however, was whether Detroit's distress was due to imports or to other factors. After 46 hours of public testimony from 27 different groups over a week-long period, it was determined that increased imports were not a "substantial cause of injury" to the domestic industry, as defined under section 201. The economic conditions of the time and the change in consumer tastes to more fuel-efficient automobiles were found to be far more influential in causing the slump the Detroit automakers were experiencing. The automobile case was proof of the efficacy of the escape clause action and the wisdom of the architects of that law.

The Discussion Draft

The Discussion Draft prepared by the Subcommittee staff includes a wide range of proposed trade law reforms, including some fundamental changes in the operation of the escape clause. This statement focuses on a few of the proposed Section 201 reforms that AIADA considers particularly dangerous trangressions from the U.S. commitment to free and fair trade.

1. Presidential discretion.

Among the Section 201 -- related provisions of the Subcommittee Staff Discussion Draft is a proposal to curtail the presidential discretion in Section 201 cases. The Draft shifts all responsibility for imposing remedies from the President to the Office of the U.S. Trade Representative (USTR). Robbing the President of his discretionary powers (which are already tempered

by the possibility of a joint resolution of Congress and the imposition of the Commission's recommendation) would weaken an essential check on "escape clause" relief. Currently, Section 201 establishes a two-tier process in which the ITC acts as a fact-finder and the President acts as a policy-maker. In its fact-finding role, the Commission evaluates the economic condition of the domestic industry and the causal effect of increased imports. If the injury and causation tests are met, the ITC recommends adjustment assistance or global import restraints. Then, in his policy-making role, it is the President who evaluates whether the ITC recommendation is in the overall national interest.

Among other things, the President must take into account the efficiency of import controls in promoting industry adjustment, the cost to consumers, the likely retaliation by foreign trading partners, the economic and social costs involved, and the international economic and foreign policy interests of the United States. As a practical matter, these considerations under the current system are the subject of careful review and advice by the full economic cabinet. Were only one Executive branch office involved - in this case USTR - the benefit of this broad-ranging review would be lost. Finally, under our democratic system, it is preferable that critical trade policy decisions are made by the President, who is directly accountable to the people. By lodging final authority in the Trade Representative, there is a risk that U.S. trade policy would become overly

responsive to the narrow interests of the international trade community, to the detriment of overall national interests.

2. Recessionary conditions.

Equally disturbing is a proposed Section 201 change in the Discussion Draft which significantly alters the causal standard. Current law requires that increased imports be "a substantial cause of serious injury or the threat thereof." Consistent with the underlying principle that relief from fairly-traded imports should be available only in extraordinary circumstances, "substantial" is defined as "a cause which is important and not less than any other cause." 19 USC § 2251(b)(4). Requiring the increased imports to be the single most important cause is critical to limiting escape clause relief to those instances where injury is truly a result of import penetration and not other factors, such as an economic slowdown or a change in consumer tastes.

The Discussion Draft proposes that there be a blanket exception in the Section 201 causal standard for "a decline in demand due to general recessionary conditions." According to Section 213(5) of the Draft, such recessionary conditions "may not be considered a cause more important than imports." This constitutes a major change in direction in escape clause theory. Implementation of this proposal would mean that even when the most important cause of a domestic industry's distress is a general economic slowdown, that domestic industry could obtain the extraordinary relief offered under Section 201.

The United Automobile Workers stated before this Subcommittee last week that, "[H]ad such a provision been in place in 1980, we could have won our [Section 201] case concerning automobiles at the ITC." As noted above, the domestic industry loss in the 1980 case was the correct result: Section 201 relief should not be made available when factors other than imports are primarily responsible for injury to the domestic industry. That the ITC made the right decision in 1980 has been borne out by the fact that the combination of a general improvement in the U.S. economy and a shift among U.S. automakers to smaller cars has resulted in improved conditions for the domestic industry. Recent evidence includes the fact that in 1985 domestic vehicle sales reached nearly record numbers, trailing only the boom years of 1978, 1977 and 1973.

Proponents of this proposed change in the causation standard have alleged that it is necessary to enable domestic industries to receive relief during an economic slowdown. The weakness of this argument is apparent from a quick review of recent ITC actions. In 1984, the ITC recommended import relief for the copper industry, even though a major cause of the injury was the drop in demand resulting from recessionary conditions in 1974-75, 1979-80 and 1982. In a number of recent cases (Carbon and Certain Alloy Steel Products, 1984; Heavyweight Motorcycles, 1983; and Stainless Steel and Alloy Tool Steel, 1983), the ITC has found that the 1982 recession was in part responsible for injury and still recommended relief. This is entirely consistent

with the letter and spirit of the escape clause. When increasing imports are the primary cause of injury to a domestic industry, relief should be recommended even in periods of recession.

Inevitably, this proposed change would result in widespread import restrictions during recessionary periods in the United States. The erection of such barriers to trade will, in turn, decrease foreign trade, thus contributing to worldwide economic recession. Such is not the road to U.S. recovery. Instead it is a return to the kind of escalating protectionism which characterized the 1930's and ultimately placed the international trading system in danger of total collapse.

Changing the causal standard to ignore general recessionary conditions is not only bad trade policy; it is likely to be found a violation of GATT Article XIX. As outlined above, Article XIX restricts escape clause relief to those circumstances where a domestic industry is injured <u>because</u> of increased imports.*/ Under the new standard set forth in the Discussion Draft, a domestic industry could be primarily injured by general economic conditions and still obtain relief. Indeed, <u>but for</u> the general economic downturn, the domestic industry

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*/ Article XIX states that escape clause relief is available "If, ... any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury ..."

could be healthy. Imports, even if increasing, could not be considered the cause of the domestic industry's woes in such cases.

Moreover, even import restrictions imposed pursuant to a valid escape clause mechanism give rise to an obligation for "compensation" under Article XIX (3) of the GATT. Thus, our trading partners would be free to impose substantially equivalent protectionist measures. The proliferation of national barriers to free trade would be counterproductive at any time and precisely the wrong antidote to a global recession.

3. Industry adjustment plan.

Perhaps the most disturbing departure from current law is the Discussion Draft's proposal that relief be guaranteed under certain circumstances. Under this provision, if the petitioning domestic industry prepares an "industry adjustment plan" and the ITC approves the plan and finds injury, USTR would be required to provide import relief. The only discretion left to USTR would be in determining, within limits, the nature of the relief. For example, adjustment assistance and other less restrictive forms of relief would not be permitted if quotas or tariffs were recommended.

This proposal constitutes a major departure from current law, where relief is always subject to Executive branch discretion. Thus, Discussion Draft proposals would not only shift authority from the President to USTR as noted above, but would also remove nearly all discretion from the Executive branch

as a whole when the ITC found injury and approved an adjustment plan. As discussed above, the President plays a unique role as protector of the national interest. He alone reviews the significant broader domestic and international consequences of granting relief under Section 201. Circumvention of meaningful Executive branch review when an adjustment plan is approved by the ITC would constitute a considerable lessening of necessary safeguards currently built into Section 201.

The emphasis in this proposal on an industrial adjustment plan is also unnecessary. As a practical matter, both the ITC and the President currently consider the adjustment plans of the petitioning domestic industry in deciding whether to grant relief. In fact, the ITC is mandated by Section 201(b)(5) to "investigate and report on efforts made by firms and workers in the industry to compete more effectively with imports" and the President is specifically directed under Section 202(c)(3) to consider "the probable effectiveness of import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition. . ." To specifically provide for an adjustment plan is thus unnecessary. Both the Commission and the President already solicit and receive such information from the domestic industry concerned.

The major difference would be that currently such plans are just one of many considerations taken into account by the President. Other absolutely critical factors such as the impact

on consumers, U.S. international economic interests and other social and economic concerns are also considered by the President. Under the Discussion Draft proposal, none of these factors could be considered when the ITC finds injury and approves an adjustment plan.

The reliance on an adjustment plan also constitutes excessive governmental involvement in the economy. Like recent ill-fated proposals for an "industrial policy", representatives of labor, management, consumers, communities and government would prepare these industrial adjustment plans. Once the plan was approved by the ITC and mandatory relief was granted, it would then be necessary for the domestic industry to implement the government-approved plan to the satisfaction of an ITC-appointed governmental "plan implementation review committee" in order to continue to receive relief. Such an approach smacks of the kind of governmental intrusion in the economy that runs counter to the fundamental trust in free enterprise shared by most Americans.

Conclusion

Taken individually, these various proposed reforms to Section 201 make the extraordinary relief provided under the escape clause too readily available. Together, they risk the transformation of Section 201 into a blunt instrument of protectionism. In particular, the combination of a new causation standard, which allows Section 201 relief even when the primary cause of injury is general recessionary conditions, and a new automatic relief track upon ITC acceptance of an adjustment plan

and finding of injury, would pose a real risk to free trade. In times of a temporary United States economic slowdown, domestic industry use of Section 201 would be likely to serve as a catalyst for the widespread erection of national trade barriers, thereby reversing many of the gains made in the last half century to liberalize the global trading system.

Section 201 is a classic example of a law which isn't broken and therefore shouldn't be fixed. The answers to perceived international trade problems are more likely to be found in vigilant enforcement of our unfair trade laws, trade adjustment assistance in appropriate circumstances, and efforts to enhance U.S. competitiveness and increase exports. AIADA urges the Subcommittee to reject those Section 201 proposals in the Discussion Draft which place the United States in a protectionist stance at the precise time when our commitment to free and fair trade is paramount.

SUMMARY

Submission of the American International Automobile Dealers Association (AIADA) Regarding Section 201 of the Trade Act of 1974

I. Fair versus Unfair Trade

A. The U.S. properly distinguishes between fair and unfair trade. Seeking a "level playing field" means fighting unfair trade practices but promoting fairly traded imports. The alternative to a system of free and fair trade is protectionism which history has proven to be counterproductive.

B. Unfair trade laws are in place and working. Unfairly traded imports and unfair foreign trade practices should continue to be opposed vigorously within international standards.

II. Section 201 of the Trade Act of 1974

A. Domestic industry relief from fairly traded imports is also available -- but only in extraordinary circumstances stipulated under the GATT where serious injury is caused by imports and temporary relief will allow domestic industry to recover. A review of recent Section 201 actions, including the 1980 automobile case, demonstrates that the escape clause works.

III. The Discussion Draft

A. Proposed reforms to Section 201 are counterproductive to U.S. interests in free and fair trade.

1. Shifting authority from the President to USTR risks seriously weakening an essential check on escape clause relief. Only the President is in a position to consider the broad-ranging domestic and international concerns which accompany the exercise of Executive Branch discretion under Section 201.

2. Altering the causation standard to disregard recessionary conditions when they are the primary cause of injury is counter to escape clause theory that injury is caused by imports, not other factors. Such a change would inevitably result in a proliferation of successful Section 201 actions during times of U.S. economic slowdown, resulting in foreign government retaliation and a deepening of recessionary conditions worldwide. Permitting relief when imports are not the cause of injury is also a derogation of U.S. international obligations.

3. New proposals that USTR would be required to grant relief if the ITC finds injury and approves an industry adjustment plan circumvents the critical element of Executive Branch discretion in escape clause cases.

IV. Conclusion

Taken separately, these proposed reforms in relief from fairly traded imports are bad policy. Together, they have the potential of transforming Section 201 into a crude instrument of protectionism at a time when the U.S. commitment to free trade is critical to continued efforts to liberalize the global trading system.

Chairman GIBBONS. Thank you, sir.

Mr. Millet of the Automobile Importers of America.

STATEMENT OF RALPH T. MILLET, CHAIRMAN, AUTOMOBILE IMPORTERS OF AMERICA, INC., ACCOMPANIED BY BRUCE AITKEN, COUNSEL

Mr. MILLET. Mr. Chairman and members of the subcommittee, my name is Ralph Millet. I am chair of the Automobile Importers of America [AIA], an association of automobile importers in the United States including 11 European and 18 Japanese companies. I am accompanied by Bruce Aitken, of the firm of Busby, Rehm & Leonard, our trade counsel.

Our comments today will deal primarily with that part of the discussion draft that proposes amendments to the section 201 of the Trade Act of 1974, the so-called escape clause. We would like to submit for the record an AIA position paper that discusses our opposition to the discussion draft's and proposed changes to sections 201 and 301 and trade negotiating authority.

I would like to have my complete statement and that discussion paper as part of the record.

Chairman GIBBONS. Under previous consent, it will be included.

Mr. MILLET. The escape clause contains two fundamental principles:

First, the ITC is required to consider "all economic factors which it considers relevant."

Second, the President is required to take into account "the national economic interest of the United States."

The AIA opposes these proposed amendments discussed below for reasons. First, "If it ain't broke, don't fix it." In fact, the escape clause has proved effective. In the last 3 years, the ITC has considered 11 cases, and it has made affirmative determinations in 6. The President decided to provide import relief in three of these cases. Since the last amendments to this escape clause in 1974, the incidence of affirmative determinations and resulting imposition of import restrictions has been similar to that over the past 3 years.

Second, amendment of the escape clause in the present congressional climate is likely to invite protectionist changes from the House as a whole. Last year, your committee wisely avoided amendments for this reason, and we would hope the committee will exercise similar wisdom this year.

Beyond these general considerations, we specifically object to five proposed amendments in the discussion draft.

First, the prohibiting of the ITC's consideration of general recessionary conditions as a cause of injury. This amendment would violate the basic principle of the escape clause that the ITC is to take into account all economic factors it considers relevant. Without the authority to make an objective and comprehensive analysis the ITC's analysis would be compromised and its determination would become prejudiced.

Furthermore, the committee's adoption of the amendment might cause greater dangers to the escape clause's criteria for causation.

Second, automatic import relief. The discussion draft would make import relief mandatory if the ITC finds serious injury, or

the threat thereof, and approves an adjustment plan for the domestic industry. Such automatic import relief would violate the second basic principle of the escape clause—that import relief must be in the national economic interest. An ITC determination of injury and approval of a domestic plan does not necessarily mean it is in the economic interest.

Our consideration, such as the stake of the consumers, must be taken into consideration in weighing the national economic interests. Statutory straight jackets must be avoided in the interest of a rational trade policy.

Another difficulty with this proposal is that the board that would approve the adjustment plan would not include any voting representative of the U.S. Government to provide national interest representation.

Third, to put this sharply in focus, the AIA opposes quotas in general and, in particular, opposes authorizing the escape clause quotas. First, this would make it substantially more difficult to keep escape clause relief as temporary as possible.

Second the creation of a system to implement the auctioning would give rise to bureaucratic nightmares involving a series of complex implementing regulations. Consumers would end up paying not only the increased prices but also the auction fees.

Chairman GIBBONS. Excuse me. Could I interrupt you. We have a quick vote and we will be right back.

[Brief recess.]

Chairman GIBBONS. You may proceed.

Mr. MILLET. I was discussing five points of your draft. I was starting on my fourth point which is interim import relief before the ITC determination.

AIA opposes permitting the USTR to impose interim import relief before the ITC's determination if the USTR finds critical circumstances. However, no objective criteria are set forth by which to make that determination. The danger of this amendment is twofold. First, it is certainly a matter of speculation whether providing escape clause relief would or would not cause irreparable harm to the domestic industry.

Second, if the USTR decided upon interim import relief, it would prejudice the ITC's determination. In short, the separation of the ITC from the executive branch, which is so highly valued, would be significantly compromised.

Fifth, transfer of decisionmaking authority from the President to the USTR. The escape clause now directs the President to base his determination whether to grant import relief on the national economic interest. That interest includes but is not limited to nine statutory criteria that are different than those required to be considered by the ITC. The USTR has neither the authority nor the expertise to determine what is or is not in the national economic interest.

In short, such a transfer of authority is likely to precipitate ill-considered import restrictions.

In conclusion, Mr. Chairman, let me say the escape clause has been on the books since 1951. In its present form, it reflects many years of experience and congressional consideration. The roles assigned to the ITC and the President strike a good balance between

the needs of domestic industries and the demands of the national economic interest. AIA urges the committee to recognize the soundness of the existing provisions of the escape clause and, therefore, to refrain from proposing any amendments to it.

Thank you very much, Mr. Chairman.

[The prepared statement follows:]

TESTIMONY OF
RALPH T. MILLET, CHAIRMAN
THE AUTOMOBILE IMPORTERS OF AMERICA, INC.
BEFORE THE
SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
APRIL 15, 1986

Mr. Chairman and members of the Subcommittee, my name is Ralph Millet. I am chairman of the Automobile Importers of America (AIA), an association of automobile importers in the United States, including 11 European and 8 Japanese companies. A list of our members is attached. I am accompanied by Bruce Aitken of the firm of Busby, Rehm and Leonard, our trade counsel.

Our comments will deal primarily with that part of the Discussion Draft that proposes amendments to section 201 of the Trade Act of 1974, the so-called "escape clause." We would like to submit for the record an AIA position paper which discusses our opposition to the Discussion Draft's proposed changes to section 201, as well as renewal of trade negotiating authority, which we favor, and amendments to the retaliation authority under section 301, which we generally oppose.

AIA is particularly well-qualified to comment on the escape clause because its members were respondents in the escape clause case brought by the UAW and Ford Motor Company in 1980. This case involved the largest amount of trade in the history of the escape clause. Some of our members were also respondents in the 1983 motorcycle case under the escape clause.

Basic Principles

As this Committee well knows, the purpose of the escape clause is to authorize the President to provide temporary relief to a domestic industry that is seriously injured, or threatened with serious injury, by increased imports, even though the imports are fairly traded. After investigation and recommendation by the U.S. International Trade Commission (ITC), the President may impose import restrictions designed to provide time (up to no more than eight years) to the industry to adjust to competition. This allows the United States to "escape" -- temporarily -- trade concessions given to its trading partners.

The escape clause contains two fundamental principles:

- First, the ITC is required to make an objective determination whether increased imports are a substantial cause of serious injury, or the threat thereof, to a domestic industry on the basis of "all economic factors which it considers relevant."

- Second, the President is required to take into account a different set of statutory criteria, such as the effectiveness of import relief as a means to promote the adjustment of the industry and the effect of such relief on consumers. Essentially, the President's decision must be guided by "the national economic interest of the United States."

AIA Opposes the Proposed Amendments to the Escape Clause

AIA opposes the proposed amendments of section 201, discussed below, for two reasons. First, "if it ain't broke, don't fix it." In fact, the escape clause has proved effective. Over the past three years, for example, the ITC has considered 11 cases, and it has made affirmative determinations in 6. The President,

in turn, decided to provide import relief in 3 of these cases, that is, motorcycles, stainless steel, and carbon steel. In the case of carbon steel, the relief took the form of voluntary restraint arrangements. This is quite a reasonable batting average, given that escape-clause relief covers fairly-traded goods and has always been designed to be exceptional and to respond to the national economic interest. Since the last significant amendments of the escape clause, in 1974, the incidence of affirmative determinations and resulting imposition of import restrictions has been similar to that over the past three years.

Second, amendment of the escape clause in the present Congressional climate would only invite protectionist changes by the House as a whole beyond the amendments proposed in the Discussion Draft. Last year, this Committee wisely refrained from proposing amendments to the escape clause for just this reason. We would hope the Committee would exercise similar wisdom this year.

AIA's Specific Objections

Beyond these general considerations, AIA specifically objects to five proposed amendments in the Discussion Draft --

- prohibiting the ITC's consideration of general recessionary conditions as a cause of injury,
- making import relief automatic if the ITC finds serious injury and approves an adjustment plan,

- authorizing the auctioning of escape-clause quotas,
- authorizing the U.S. Trade Representative (USTR) to grant interim import relief in advance of the ITC's determination, and
- transferring decision-making authority from the President to the USTR.

1. Prohibition of recession as cause of injury. The Discussion Draft would provide that a decline in demand due to general recessionary conditions in the U.S. economy may not be considered a cause of injury more important than imports. This amendment would violate the basic principle of the escape clause that the ITC is to take into account all economic factors it considers relevant. Without the authority to make an objective and comprehensive analysis, the ITC's analysis would be compromised and its determination would be prejudiced. In the automobile case, the majority found that the decline in demand for automobiles owing to general recessionary conditions was a cause of injury greater than increased imports. Under such circumstances, the majority quite rightly reached a negative determination. For the Congress to require the ITC to ignore a given factor would put it in a statutory straight jacket and destroy its objectivity.

Furthermore, the Committee's adoption of the amendment might encourage even more dangerous changes to the escape clause's criteria for causation. For instance, H.R. 3777 would substitute

"a cause" for "a substantial cause." This would mean that any time increased imports and serious injury were both present, such increase -- however slight -- would be a cause, triggering an affirmative ITC determination. This would effectively remove all causation from the escape clause and turn it into a truly protectionist device. In particular, it might provoke emulation or retaliation by other countries that would expose fairly-traded U.S. exports to damaging import restrictions.

2. Automatic import relief. The Discussion Draft would make import relief mandatory if the ITC finds serious injury, or the threat thereof, and approves an adjustment plan for the domestic industry. Such automatic import relief would violate the second basic principle of the escape clause -- that import relief must be in the national economic interest. An ITC determination of injury and approval of an adjustment plan does not mean that import relief is necessarily in the national economic interest. Consider the 1984 copper case. The President found that restrictions on copper imports would seriously disadvantage the copper-fabricating industry in the United States, shrink domestic demand for copper over time, and thus aggravate the problems of the U.S. copper producers themselves. Other considerations, such as the stake of consumers, must also be taken into account in weighing the national economic interest. Again, statutory straight jackets must be avoided in the interest of a rational trade policy.

Another difficulty with this proposal is that the board that would approve the adjustment plan would not include any voting

representative of the U.S. Government. This proposal appears to follow the successful "bail out" of Chrysler under its reorganization plan as implemented by the statutory Chrysler Corporation Loan Guarantee Board. This plan was successful in large part because that board, voting members of which were the Secretary of the Treasury (Chairman), the Chairman of the Board of Governors of the Federal Reserve System, and the Comptroller General, was able to bring the public interest to bear on Chrysler's creditors, unions, and management. The Discussion Draft provides for no such national-interest representation.

3. Auctioning of quotas. AIA opposes quotas in general and, in particular, authorizing the auctioning of escape-clause quotas. First, this would make it substantially more difficult to keep escape-clause relief as temporary as possible. The statute now provides that such relief should initially last no longer than five years, allows an extension of no more than three years, and urges that the relief be phased down after the third year. If, as apparently intended, the auctioning of escape-clause quotas would raise a substantial amount of revenue, the quotas would become addictive and that much harder to terminate before the eighth year.

Second, the creation of a system to implement the auctioning would give rise to a bureaucratic nightmare involving a series of complex implementing regulations. Take an imported product that consists of many classes covering a wide gamut of price ranges. How would the classes be defined? How would the price ranges be demarcated? How would old and new, large and small importers be

accommodated? Would a successful bidder be required to use the quota or would inaction be permitted thereby depriving consumers of a full measure of price competition? In short, the auctioning of escape-clause quotas would create another non-tariff barrier that would penalize importers and consumers. Consumers would wind up paying not only the increased prices that typically accompany products under quota but the auction fees, as well. The inflationary effect of quotas would thereby be compounded.

4. Interim import relief before ITC determination. AIA opposes permitting the USTR to impose interim import relief before the ITC's determination if the USTR finds critical circumstances. These circumstances exist if a substantial increase in imports over a relatively short period of time has led to circumstances in which a delay to provide escape-clause relief would cause irreparable harm to the domestic industry. However, no objective criteria are set forth by which to make that determination. The danger of this amendment is two-fold. First, it is certainly a matter of speculation whether the delay in providing escape-clause relief would or would not cause irreparable harm to the industry. The lack of objective criteria would therefore risk the "politicizing" of the critical circumstances provision.

Second, if the USTR decided upon interim import relief, it would prejudice the ITC's determination. The ITC would no longer be playing an independent role but would instead have to justify either agreeing or disagreeing with the USTR's determination. In

short, the separation of the ITC from the Executive Branch, which has been so highly valued, would be significantly compromised.

5. Transfer of decision-making authority from the President to the USTR. The escape clause now directs the President to base his determination whether to grant import relief on the national economic interest. That interest includes, but is not limited to, nine statutory criteria that are different from those required to be considered by the ITC. The President, for example, must consider the effectiveness of import relief as a means to promote the adjustment of the domestic industry and the effect of such relief on consumers. In practice, the President's decisions have been guided not so much by the specific criteria in the statute as by the overriding standard that he must apply: the national economic interest. This term necessarily embraces a wide range of factors, both domestic and international.

The USTR has neither the authority nor, as a consequence, the expertise to determine what is or is not in the national economic interest. The President is capable of taking into account the broad range of considerations; the USTR, on the other hand, deals only with trade issues and has no expertise to evaluate the many other facets of the national economic interest. The USTR would also be more susceptible than the President to political pressure to decide in favor of import relief. The USTR's authority, unlike the President's, does not depend on a broad political base and it is therefore more likely to be vulnerable to demands for protection from particular sectors of U.S. business than would the

President. It can treat such pleas at arm's length as long as it is an adviser to the President under the escape clause. Once it becomes the decision-maker, it would have to be all-too-sensitive to such pleas. In short, such a transfer of aut.ority is likely to precipitate ill-considered import restrictions.

Conclusion

The escape clause has been on the books since 1951. In its present form, it reflects many years of experience and Congressional consideration. The roles assigned to the ITC and the President strike a good balance between the needs of domestic industries and the demands of the national economic interest. AIA urges the Committee to recognize the soundness of the existing provisions of the escape clause and therefore to refrain from proposing any amendments to it.

Attachment

March 28, 1986

MEMORANDUM

SUBJECT: Rep. Gibbons' Discussion Draft (3/20/86) Bill To Reform The Trade Laws

AIA's comments on Rep. Gibbons' Discussion Draft Bill are restricted to the proposed amendments to three parts of the Trade Act of 1974: the trade negotiating authority (section 101 et seq.), the retaliation authority (section 301 et seq.), and the escape clause (section 201 et seq.).

TRADE NEGOTIATING AUTHORITY

The Discussion Draft Bill would give the President new trade negotiating authority. It would link such authority to a Presidential request for an international monetary conference and to the achievement of two sets of negotiating objectives, one general and the other specific. Among the specific objectives is the negotiation of a Safeguards Code. The purpose of the code would be to require all countries to satisfy objective economic criteria before they could impose either import restrictions (like quotas) or export restrictions (like a voluntary restraint arrangement).

AIA supports this part of the Discussion Draft Bill. The liberalization of world trade is a constant process, and a number of areas need to be addressed in a new round of multilateral negotiations. U.S. participation in such negotiations is vital, and the bill would provide the necessary authority for such participation. AIA believes that both the general and specific negotiating objectives are sound and appropriate under the circumstances.

In particular, AIA urges a determined effort by the United States and other countries to negotiate an effective Safeguards Code. Too often in the past have countries, including the United States, resorted to restrictive measures that did not satisfy the criteria of Article XIX of the GATT. If this is allowed to continue, the GATT will lose much of its effectiveness in curtailing protectionist actions.

An effective Safeguards Code would obligate countries to satisfy objective economic criteria before they could restrict either imports or exports. It would render unlawful any such restrictions that were imposed outside its terms. Countries would thereby be subjected to a healthy discipline that would ensure that import or export restrictions would be imposed only when truly needed and then for only a temporary period of time.

RETALIATION AUTHORITY (SECTION 301)

The purpose of section 301 is to expand world trade. It gives the President a negotiating tool to persuade foreign countries to eliminate unfair practices and to bring them into line with international agreements. Resort to retaliation under section 301 represents a failure of negotiations and therefore should be the exception rather than the rule. Indeed, the threat of section 301 action can be its most successful use.

Present law authorizes - but does not require - the President to retaliate against illegal or unreasonable trade practices. The Discussion Draft Bill would continue the discretionary authority in the case of unreasonable practices. It would, however, make mandatory retaliation against an illegal trade practice, unless (1) the GATT determines the practice is not a violation of U.S. rights or does not deny trade agreement benefits, (2) the foreign government eliminates the practice or agrees to a satisfactory phase-out, or (3) U.S. economic interests would be hurt more by retaliation.

AIA has no fundamental dispute with this provision. However, it feels that the existence of an illegal practice should not be a unilateral determination of the United States. Instead, it should be determined by an independent body, such as a GATT working panel, before section 301 is triggered.

The Discussion Draft Bill would transfer to the USTR from the President the authority to determine whether foreign practices meet the criteria of section 301. AIA believes that this would be a mistake. A section 301 determination entails sensitive aspects of the foreign economic policy of the other country accused of illegal or unreasonable trade practices. In particular, an affirmative determination can have a serious impact upon U.S. relations - both political and economic - with the other country. For these reasons, it is important that the President retain the function of making formal determinations under section 301. The USTR can and should properly remain the primary resource that the President uses in making his determinations.

AIA also views with concern the Discussion Draft Bill's reduction of time limits for section 301 proceedings. As noted above, retaliation reflects a failure of the section 301 process, which depends on negotiation and threat for its effectiveness. Premature deadlines would weaken that effectiveness and would not allow adequate time for a thorough investigation of the issues involved.

ESCAPE CLAUSE (SECTION 201)

The purpose of the escape clause is to authorize the President to provide temporary relief to a domestic industry that is seriously injured, or threatened with serious injury, by increased

imports, even though the imports are fairly traded. After investigation and recommendation by the United States International Trade Commission (USITC), the President may impose import restrictions designed to provide time (up to no more than 8 years) to the industry to adjust to competition. This allows the United States to "escape" - albeit temporarily - trade concessions given to its trading partners; hence it is known as the "escape clause."

The USITC is required to make an objective determination on the basis of "all economic factors which it considers relevant." The President is required to take into account a different set of statutory criteria, such as the effectiveness of import relief as a means to promote the adjustment of the industry and the effect of such relief on consumers. Under the escape clause, the President's decision must be fundamentally guided by the national economic interest.

AIA opposes any amendment of the escape clause for two reasons. First, it has proved effective. While Congressional concern has been aroused by those who have disagreed with the decisions of the USITC or the President, the fact is that such decisions have been consistent with the statutory guidelines and the national interest.

Second, any section 201 amendment invites protectionist amendments. To date, the Ways and Means Committee has wisely

resisted any protectionist amendments to section 201. Any protectionist amendment proposed by the Ways and Means Committee to a statute as prominent as the escape clause can only stimulate an unenlightened approach on the part of the six other committees working on a comprehensive trade bill in the House.

In particular, AIA opposes the provisions of the Discussion Draft Bill which would permit or require import restrictions in violation of section 201's basic underlying criteria:

1. Section 201 now directs the USITC to base its determination on "all economic factors which it considers relevant." This assures an objective analysis. The Discussion Draft Bill, however, would prohibit the USITC's considering "a decline in demand due to general recessionary conditions in the United States economy" as a "cause more important than imports." This would significantly inhibit the USITC from making an objective analysis. For the first time in history, the USITC's role would be prejudiced.

2. Section 201 now directs the President to base his determination whether to grant import relief on the national economic interest. The Discussion Draft Bill would seriously impair this criterion in two ways. First, it would transfer the ultimate decision-making authority from the President to the USTR. The USTR has neither the competence nor the authority to determine what is or is not in the national

economic interest. The USTR would also be more susceptible than the President to political pressure to decide in favor of import relief. Second, the Discussion Draft Bill would require import relief if the USITC finds serious injury and approves the adjustment plan for the domestic industry in question. (Such a plan would be prepared by a board, but the voting members would not include any U.S. Government representative.) Merely because the USITC can find serious injury and approve the adjustment plan does not mean that the provision of escape-clause relief would be in the national economic interest.

AIA objects to the provision of the Discussion Draft Bill which permits the USTR to grant provisional interim import relief to prevent irreparable harm if critical circumstances exist. In the first place, the provision does not define critical circumstances with sufficient particularity to ensure its legitimate use. In the second place, giving the authority to the USTR risks politicizing the decision and prejudicing the USITC's later determination.

The Discussion Draft Bill would authorize the public auctioning of rights to import goods under quotas established under the escape clause. AIA has serious reservations about this provision. First, it provides no details whatsoever on the manner in which the auctions would be conducted. How would importers, large and small, new and old, be given fair and equitable participation in the auctions? How would speed and efficiency be assured so as not to create another non-tariff trade barrier? Second, if, as the Discussion Draft Bill provides, the auction revenues were to be used to finance adjustment assistance, this could make it significantly harder to eliminate the quotas.

Chairman GIBBONS. Do any other members of the panel wish to make any statements before we start asking questions?

Is the heart of all of your criticism of this proposal based on the 201 provisions?

Mr. MILLET. Our position statement that we are submitting, sir, takes some exception with 301 and also discusses the President's negotiating authority, but my testimony focused primarily on the 201.

Mr. GRAVES. Our testimony focused on 201 also.

Chairman GIBBONS. We get criticism that the 201 provision is not as strong as we are allowed to have under the GATT rule. What is your response to that?

Mr. MILLET. My response, Mr. Chairman, there is a misinterpretation of what the GATT rule really says. I would like to ask Mr. Aitken to answer that specifically because he has a better interpretation than I do.

Mr. AITKEN. I think there is certain mythology that attaches to this argument. I am looking at a Labor Industry Coalition on International Trade document that epitomizes that which is called the Trade Law Modernization Act which, on page 4, claims there is a need to reduce the causation standard from substantial cause to a cause to conform with the GATT which argument is nonsense. I could make some puns about their crying wolf but I should refrain from that. In any event, I think it is important for you to look at what the context of the GATT was and what the language says. I am happy to introduce in the record for you article XIX, paragraph 1.(a) of the GATT.

Chairman GIBBONS. Put it in at this point.

[Article XIX follows:]

GATT ARTICLE XIX, PARAGRAPH 1(a)

(Escape Clause Causation Standard)

1. (a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, *any product is being imported* into the territory of that contracting party in such increased quantities and under such conditions *as to cause* or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession. [Emphasis added.]

Mr. AITKEN. It talks about import relief when a product is being imported in such increased quantities and under such conditions as to cause the injury. It doesn't say to cause after discounting for a recession or after discounting for two causes for the following reasons. It is import to cause. That is translated and epitomized in the EC's escape clause which has a standard very similar to the present causation standard contained in U.S. law which is that there will be import relief when there is substantial injury or threat of substantial injury to producers resulting from such imports. Imports are not merely a cause but the cause under this standard. It is a fundamental difference. It is one word difference in standard, but it is a very important word.

If I could conclude on this point, Mr. Chairman, it is that with reference to your committee report back in 1973 wherein you made the last major change in the escape clause, you described that major change in those words when the escape clause was broadened and the causal link was eliminated from tariff concessions, which is what article XIX primarily is about.

The GATT was started in the late 1940's when there were a series of tariff concessions that caused some anxiety on the part of the signatories, and so the escape clause was put into effect to provide relief from increased imports causing serious injury—from tariff concessions. Well, it is apples and oranges now.

We have a statute which is no longer linked to tariff concessions and has not been since 1974. For the LICIT crowd to come before us and say we have to get the escape clause causation standard to conform to the GATT is nonsense. Our concern is that if this change is made, you will be making a change in the escape clause as serious, as major as the one you did in 1973–74.

Now, what are the implications of that? First of all, you will have an increase in the number of filings and the number of import restrictions imposed under the escape clause.

What will that result in?

First, it will result in requests for compensation from our trading partners—so there will be pain to the American public and American exporters from precipitous filings for escape clause relief.

Second, you can be sure that the EC and our other major trading partners will follow suit and amend their escape clauses as well.

In the last 12 years since this major change, there have been 13 impositions of import restrictions under the escape clause in the United States and only a fraction of that in Europe. I think you have to recognize that, because if you got causation standard now, you have to expect similar changes in legislation abroad that will affect for fairly trading American exports.

Chairman GIBBONS. Is that covered in detail in any one of your statements?

Mr. AITKEN. We have described our concern regarding the causation standard. If you wish, we will put in a statement regarding the EC law and the case experience under that law.

Chairman GIBBONS. I would ask you to do that, and without objection, we will keep the record open for that. Would you bring a copy to my office.

Mr. AITKEN. Yes.

[The information follows:]

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RECEIVED
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Ways and Means
Subcommittee on Trade

April 18, 1986

The Honorable Sam Gibbons
Chairman
Trade Subcommittee
Ways and Means Committee
U.S. House of Representatives
Washington, D. C. 20515

Dear Chairman Gibbons:

During my appearance before your subcommittee on April 15, 1986, regarding propoped amendments to our escape clause statute, Section 201 of the Trade Act of 1974, you requested a written submission regarding proposals to alter the Section 201 causation standard. Specifically, you requested that we address the issues of whether the proposal to change the causation standard in Section 201 from a "substantial cause" to merely "a cause" of serious injury is inconsistent with (a) Article XIX of the GATT and (b) the practice of the EC in implementing its escape clause. The following discusses this "simple cause" proposal.

The Proposed Simple Cause Amendment

The Trade Law Modernization Act, introduced by Representative Dingell (H.R. 3777), and the Trade Law Modernization Act of 1985, introduced by Representative Guarini (H.R. 1950), would both amend the escape clause to allow the U.S. International Trade Commission to make an affirmative determination when increased imports are merely "a cause", as opposed to "a substantial cause", of injury to the domestic industry. This simple cause amendment proposal should be rejected if it is raised during next week's mark-up of the Subcommittee's Discussion Draft bill.

The simple cause amendment would be inconsistent with the terms of Article XIX of the GATT, on which section 201 is based.

The proponents of the simple cause amendment - the Labor/Industry Coalition for International Trade (LICIT) - claim that the replacement of "a substantial cause" with "a cause" is necessary "to conform to the GATT standard." This is simply not true.

The GATT escape clause embodied in Article XIX covers circumstances where a product is being imported "in such increased quantities and under such conditions as to cause or threaten serious injury" to a domestic industry. (Emphasis added.) It is clear from this language that there must be a significant causal link - that it must be the imports that cause, or threaten to cause, the serious injury.

This causal link has been explicitly recognized by the EC. Its escape clause is set forth in Council Regulation (EEC) No. 288/82 (February 5, 1982), concerning "Common Rules for Imports". Article 9 requires a finding of "substantial injury or threat of substantial injury to Community producers resulting from such imports...." (Emphasis added.) The EC's most recent escape-clause case resulting in the imposition of import restrictions involved digital watches (Commission Regulation (EEC) No. 1087/84 (April 18, 1984)). In making its affirmative determination, the Commission set forth its understanding of the causal link in the following language (paragraph 33):

> With regard to determining whether there is a causal link between the substantial injury sustained by the French and German producers of assembled watches and the imports in question, it should be examined whether - and to what extent - the injury is the result of imports of digital watches, of imports of analogue quartz watches, or of other causes yet to be defined. (Emphasis added.)

In finding injury, the Commission determined that imports had been the cause of "substantial injury" after an analysis of imports "taken in isolation." In making its determination, it rejected the argument of certain interested parties that a drop in demand due to changing consumer trends was "the main cause."

The simple cause amendment is flatly inconsistent with this concept. To allow import relief under section 201 when the increased imports are a small and even insignificant cause of injury would flout the requirement of Article XIX.

Escape-clause relief taken under the simple cause amendment would require compensation and provoke emulation.

Since 1974, some form of import relief has resulted from section 201 proceedings in 13 of the 56 completed cases. Adjustment assistance has been provided in 7 additional cases. By contrast, during the same period, import restrictions have been imposed in only a handful of cases in the EC.

If the simple cause amendment were enacted, a rash of section 201 cases should be expected and a substantial increase in the number of cases resulting in the imposition of import restrictions. Inevitably, this will have two consequences: (a) requests for compensation, and (b) the enactment of mirror image legislation. The latter will expose fairly-traded U.S. exports to the imposition of import restrictions abroad.

Enclosed is a memorandum which discusses the proposed simple cause amendment more fully, as well as the proposed recession amendment to the causation standard contained in the Discussion Draft.

We request that you include this letter, and the accompanying memorandum, in the record of the April 15, 1986, hearing following the testimony of Mr. Ralph T. Millet and myself.

Thank you for your consideration of this important issue.

Sincerely,

BUSBY, REHM and LEONARD, P.C.

Bruce Aitken

Enclosure

April 18, 1986

REASONS FOR OPPOSITION TO
PROPOSALS TO LOWER THE CAUSATION STANDARD IN
SECTION 201 "ESCAPE CLAUSE" INVESTIGATIONS

Executive Summary

Two proposals are pending before Congress which would lower the "substantial cause" standard in Section 201 investigations, under which the President may impose import restrictions in order to provide a temporary adjustment period to U.S. industries which are being seriously injured by increased imports, even though the imports are completely fair and legal.

The "recession amendment" would amend Section 201 to state that "a decline in demand due to general recessionary conditions in the United States economy may not be considered a cause more important than imports." This amendment should be defeated for the following reasons:

-- It is unnecessary because: (1) Section 201 already permits injured industries to receive import relief during or after a recession, as demonstrated by several recent cases; and (2) the ITC never has denied Section 201 import relief solely because a recession-induced decline in demand was determined to be a greater cause of injury than imports.

-- It will encourage a new type of Section 201 case during recessions in which import restrictions could be imposed where imports are an insignificant cause of an industry's injury. In addition, under the broad language of the recession amendment, the ITC is likely to rule out consideration of various kinds of declines in demand that are not related to a recession but that are a more important cause of injury than increased imports, thus making unmerited import restrictions more likely.

-- Because cases and industries vary significantly, the ITC must be allowed to retain its objectivity and to have discretion to weigh potential causes of injury on a case-by-case basis without being constrained by a rule which may not be appropriate in all situations.

-- The amendment could make it more difficult to negotiate a Safeguards Code, which is a prime objective of the United States in the new round of multilateral trade negotiations.

-- It is inconsistent with the purpose of Section 201 and the GATT "escape clause."

The "simple cause" amendment would amend Section 201 to allow import restrictions to be imposed when imports are merely "a cause" of injury, as opposed to present law which requires that imports be "a substantial cause" of injury. This amendment should be defeated for the following reasons:

-- It will virtually guarantee affirmative determinations by the ITC in most Section 201 cases, and thus will encourage a large number of unmerited cases resulting in significant new import restrictions.

-- Even more than the recession amendment, the simple cause amendment will produce a dramatic increase in Section 201 cases and precipitate import restrictions, resulting in demands for compensation that will reduce the tariff protection of other U.S. industries and provoking mirror-image legislation abroad that will jeopardize fairly-traded U.S. exports.

-- The amendment subverts the purpose of Section 201 import relief.

-- The amendment is inconsistent with Article XIX of the GATT, on which Section 201 is based, and with the escape clause of such major trading partners as the EC.

REASONS FOR OPPOSITION TO
TWO PROPOSALS TO LOWER THE CAUSATION STANDARD IN
SECTION 201 "ESCAPE CLAUSE" INVESTIGATIONS

The present "escape clause" - section 201 of the Trade Act of 1974 - authorizes the President to impose import restrictions when the International Trade Commission (ITC) makes an affirmative determination that increased imports are a substantial cause of serious injury, or threat thereof, tc a domestic industry. The purpose of the import relief is to provide a temporary period for U.S. industries to adjust to the increased imports. Section 201 differs from most other trade remedy laws in that it authorizes restrictions on imports that are not benefitting from unfair or illegal trade practices. The term "a substantial cause" is defined by the escape clause to mean "a cause which is important and not less than any other cause". 19 U.S.C. 2251(b)(4)

Two proposals are pending before Congress that would lower the section 201 "substantial cause" standard. The first would prohibit the ITC from considering a decline in demand due to a recession as a cause of injury greater than imports - the "recession" amendment. The second would provide that increased imports need be merely one of many causes of injury - the "simple cause" amendment.

Both proposals should be defeated because they will subvert the purpose of the escape clause and Article XIX of the GATT, turn the escape clause into a protectionist statute, and provoke actions by other countries that would hurt legitimate U.S. exports.

Recession Amendment

The House Ways and Means Committee's Omnibus Trade Bill Discussion Draft, released on March 21, 1986, would lower the "substantial cause" standard by providing that "a decline in demand due to general recessionary conditions in the United States economy may not be considered a cause more important than imports" (section 213(5)). This amendment should be defeated for the following reasons:

April 18, 1986

1. The recession amendment is unnecessary.

(A) Section 201 already permits injured industries to receive import relief despite a decline in demand due to a recession, as demonstrated by several recent cases.

Proponents argue that this amendment is necessary to enable an industry to receive import relief during a recession. Their argument is based on the false assumption that section 201 relief is always denied during a recession because a decline in demand due to a recession is considered to be a greater cause of injury to the domestic industry than imports. In fact, section 201 has been found in recent decisions to allow relief during an economic downturn. For example, in Unwrought Copper (1984), the ITC recommended import relief to the recession-sensitive copper industry, even though a significant cause of the industry's injury was the decline in demand caused by earlier recessions. Similarly, in Carbon and Certain Alloy Steel Products (1984) and Stainless Steel and Alloy Tool Steel (1983), the ITC determined that a decline in demand due to the 1982 recession was at least partly responsible for the domestic industry's injury. Nevertheless, it found that increased imports were a more important cause of injury and recommended import relief.

It is therefore by no means a foregone conclusion that a decline in demand due to a recession will necessarily be a cause of injury greater than imports. Whether one or the other is the greater cause depends upon their relative significance. If imports occupy only a small share of the market and have increased only slightly, a major decline in demand would probably be the greater cause of injury. If, on the other hand, the decline in demand is small and the increase in imports is large, the latter would in all likelihood be the greater cause. In short, the very fact that the economic conditions affecting domestic industries can vary so from case to case makes it impossible to predict the significance of any one factor.

(B) The ITC has never denied section 201 import relief solely because a decline in demand due to a recession was determined to be a greater cause of injury than imports.

In the course of the 57 investigations conducted by the ITC since Congress enacted the present version of the escape clause in 1974, the ITC has never denied relief solely because of recession-caused injury, and there are only a handful of cases in which a decline in demand due to a recession was even considered as a potentially greater cause of injury than imports. The primary case cited by proponents as demonstrating the need for the recession amendment is the six-year-old motor vehicle

investigation. However, even the motor vehicle case is not as clear-cut as proponents argue. Only one of the five Commissioners hearing the case determined that declining demand due to a recession was a greater cause of injury to the auto industry than imports. The ITC denied relief to auto manufacturers primarily because two commissioners determined that both declining demand and the shift in consumer preference towards smaller cars were more important causes of injury than imports. In light of the complete absence of cases in which relief was denied solely because of a recession-caused decline in demand, the escape clause should not be rewritten to solve a problem which has never existed.

2. The recession amendment is inconsistent with the fundamental purpose of section 201 and Article XIX of the GATT.

The purpose of section 201 is to give domestic industries temporary relief from imports when increased imports are a cause of injury that is at least as important as any other cause, even though the imports are completely fair and legal. If imports are less important than any other cause, then import relief is by definition not the appropriate remedy.

This is particularly true since import relief under section 201 is expensive. It imposes additional costs upon the consumers and otherwise promotes inflation. Moreover, by virtue of our international obligations, the United States must pay compensation, in the form of reduced restrictions on imports, or suffer retaliation, in the form of increased restrictions on exports. It is therefore helpful neither to domestic industries nor to the national economic interest to impose import relief under section 201 when imports are a lesser cause of injury.

The recession amendment would undermine the purpose of section 201 by allowing import restrictions to be imposed even when an industry's injury has not been caused by imports. In this sense, the amendment would change section 201 from a temporary import relief statute to a recession-injured industry relief statute. Virtually all U.S. industries face at least some import competition. Accordingly, during a recession, almost any domestic industry could attempt to block imports by arguing that imports are the second largest cause of injury, even though the recession-related decline in demand were admittedly the major cause.

The purpose of Article XIX of the GATT is the same as that of the escape clause. It would therefore be equally violative of Article XIX to permit escape-clause relief to be provided when imports were not at least as important a cause of injury as any other cause.

3. The recession amendment would undermine the objectivity of the ITC.

(A) Because cases and industries vary significantly, the ITC must have discretion to weigh potential causes of injury on a case-by-case basis without being constrained by a rigid rule which may not be appropriate in all situations.

Congress has given the ITC the difficult task of determining whether increased imports have caused serious injury to a U.S. industry. Because industries, economic conditions, and other considerations vary significantly in each case, Congress wisely has recognized that it could not anticipate all potential fact situations. Thus, the ITC has considered a wide variety of potential causes of injury in section 201 cases, including U.S. regulatory decisions, management decisions, labor contracts, declining U.S. exports, changes in the value of the dollar, and shifts in consumer preferences. The ITC presently has the discretion to decide whether, in the context of current economic conditions - be they either recession or expansion - injury has resulted from increased imports or from these other factors.

(B) The recession amendment would straight-jacket the ITC.

Section 201 requires the ITC to take into account all economic factors it deems relevant in making its determinations. Since the escape clause was first enacted in 1951, the ITC has been able to make its analyses in an objective and impartial manner. The recession amendment would arbitrarily tell the ITC that it could not take into account a decline in demand due to a recession. To straight-jacket the ITC in this manner would deprive it of the ability to make its determination based upon the fullest and most comprehensive review of all the relevant factors. The recession amendment would severely limit this discretion and force the ITC to undertake an artificial analysis of the causes of injury. Given the variety and complexity of escape-clause cases, the Congress is simply not in a position to prejudge the relevance or weight of any one economic factor.

4. Passage of the recession amendment would be likely to result in an increase in section 201 cases and the unwarranted imposition of import restrictions.

(A) The recession amendment would encourage a new type of section 201 case during a recession in which import restrictions could be imposed where imports are an insignificant cause of an industry's injury.

Under the recession amendment, the ITC would be required to recommend import relief during a recession in cases where

increased imports were not a substantial cause of injury. For example, import relief would have to be recommended where an industry's injury was caused 75% by declining demand due to a recession, 15% by increased imports, and 10% by shifting consumer preferences or some other cause. Under these rules, recession-damaged industries facing even modest import competition would be encouraged to initiate section 201 investigations. That could result in an increase in import restrictions during periods of economic slowdown, even in cases where imports were not the basic cause of the problem.

(B) Under the language of the recession amendment, the ITC would be likely to rule out consideration of a variety of declines in demand as causes of injury, thus making unwarranted import restrictions more likely.

The amendment prohibits the ITC from considering "a decline in demand due to general recessionary conditions in the United States economy" in assessing the causes of injury to an industry. In light of the interrelationship of most economic factors, the language of the amendment could preclude ITC consideration of various kinds of declines in demand that are coincident with, but not caused by, a recession. These could include declines in demand caused by shifts in consumer preference and product substitution. It may be impossible for the ITC to sort out such different kinds of declines in demand, and the ITC would therefore be forced to disregard the non-recession-related declines that are the cause of the injury. If such potential causes of injury are eliminated, the ITC may have no choice but to find that imports are the primary remaining cause of injury, even when their impact is relatively insignificant.

5. The resulting increase in U.S. import restrictions during a recession would require compensation and invite emulation.

By encouraging unwarranted section 201 cases and making it easier for the ITC to recommend relief, the recession amendment could significantly restrict U.S. imports. This, in turn, would give rise to obligations for compensation under Article XIX of the GATT.

Perhaps more significant, the lower causation standard is likely to be copied in other countries, making market access for fairly-traded U.S. exports more difficult. Other countries have their own escape clauses modelled upon Article XIX of the GATT. These countries are always under some degree of protectionist pressure. Accordingly, they might well be encouraged to adopt similar amendments that would permit restrictive action against U.S. exports when such exports were not a substantial cause of injury to a foreign industry.

6. The recession amendment could make it more difficult to negotiate a Safeguards Code, which is a prime objective of the United States in the new round of multilateral trade negotiations.

The United States has announced that one of its major objectives in the new round of multilateral trade negotiations is the successful conclusion of a Safeguards Code. This Code would require all signatories to observe the requirements of Article XIX before they could impose restrictions on imports - either in the form of import duties or quotas or export restraints. The Code would thereby put an end to the variety of extra-legal devices that have been used in recent years to restrict imports without compliance with the procedural and substantive standards of Article XIX. Voluntary restraint arrangements have become the most conspicuous - and harmful - example of such extra-legal devices. The more GATT countries make unilateral changes to their respective escape clauses, the more contentious issues will be injected into the negotiation of the Safeguards Code and the more difficult it will be to agree upon a final text.

Simple Cause Amendment

The Trade Law Modernization Act, introduced by Representative Dingell (H.R. 3777), and the Trade Law Modernization Act of 1985, introduced by Representative Guarini (H.R. 1950), would both amend the escape clause to allow the ITC to make an affirmative determination when increased imports are merely "a cause", as opposed to "a substantial cause", of injury to the domestic industry. This simple cause amendment should be defeated for the following reasons:

1. The simple cause test would virtually guarantee affirmative determinations by the ITC in section 201 cases.

In a typical escape-clause case, the domestic industry is able to demonstrate increased imports and serious injury. If increased imports need only be "a cause" of the injury, it is virtually a certainty that the ITC will make an affirmative determination. Under such circumstances, it would be quite extraordinary if the ITC could find that the increased imports did not play some role - however small - in causing the injury. This would, in effect, turn the present causation test into a correlation test; whenever imports had increased and there was serious injury to a domestic industry, import relief would be recommended. Since even a small increase in imports can be considered at least a minor cause of injury, this amendment will virtually guarantee import relief in most section 201 cases. In short, the simple cause amendment

would convert the escape clause into a statute of outright protectionism.

2. Even more than the recession amendment, the simple cause amendment would subvert the purpose of section 201 and Article XIX of the GATT.

The simple cause amendment goes further than the recession amendment in undermining the purpose of section 201. By virtue of the simple cause amendment, the ITC could and would recommend import relief when the increased imports were only a minor factor among the difficulties besetting the domestic industry. In such instances, import relief would be even more inappropriate and thus even less effective in assisting the domestic industry, as well as costly to other parts of the economy.

3. The simple cause amendment would be inconsistent with the terms of Article XIX of the GATT, on which section 201 is based.

The proponents of the simple cause amendment - the Labor/Industry Coalition for International Trade (LICIT) - claim that the replacement of "a substantial cause" with "a cause" is necessary "to conform to the GATT standard." This is simply not true.

The GATT escape clause embodied in Article XIX covers circumstances where a product is being imported "in such increased quantities and under such conditions as to cause or threaten serious injury" to a domestic industry. (Emphasis added.) It is clear from this language that there must be a significant causal link - that it must be the imports that cause, or threaten to cause, the serious injury.

This causal link has been explicitly recognized by the EC. Its escape clause is set forth in Council Regulation (EEC) No. 288/82 (February 5, 1982), concerning "Common Rules for Imports". Article 9 requires a finding of "substantial injury or threat of substantial injury to Community producers resulting from such imports...." (Emphasis added.) The EC's most recent escape-clause case resulting in the imposition of import restrictions involved digital watches (Commission Regulation (EEC) No. 1087/84 (April 18, 1984)). In making its affirmative determination, the Commission set forth its understanding of the causal link in the following language (paragraph 33):

> With regard to determining whether there is a causal link between the substantial injury sustained by the French and German producers of assembled watches and

> the imports in question, it should be examined whether - and to what extent - the injury is the result of imports of digital watches, of imports of analogue quartz watches, or of other causes yet to be defined. (Emphasis added.)

In making its determination, it rejected the argument of certain interested parties that a drop in demand due to changing consumer trends was "the main cause."

The simple cause amendment is flatly inconsistent with this concept. To allow import relief under section 201 when the increased imports are a small and even insignificant cause of injury would flout the requirement of Article XIX.

4. Escape-clause relief taken under the simple cause amendment would require compensation and provoke emulation.

Since 1974, some form of import relief has resulted from section 201 proceedings in 13 of the 56 completed cases. Adjustment assistance has been provided in 7 additional cases. By contrast, during the same period, import restrictions have been imposed in only a handful of cases in the EC.

If the simple cause amendment were enacted, a rash of section 201 cases should be expected and a substantial increase in the number of cases resulting in the imposition of import restrictions. Inevitably, this will have two consequences: (a) requests for compensation, and (b) the enactment of mirror-image legislation. The latter will expose fairly-traded U.S. exports to the imposition of import restrictions abroad.

Mr. FISHER. I associate myself with the comments he made about the GATT, but I want to look ahead because the new round of trade negotiations, as you know, one of the key bits of unfinished business was the safeguard scope. We need to get a commonality of rules as to how our trading partners are going to limit imports. We don't have that right now. We tried to get a safeguards code in the last round of negotiations and we were unsuccessful. We need transparency and a uniform system. You will throw away any chance to get a multilateral safeguards if you pass what is in your legislation regarding this recessionary issue.

What we think is important is the need for an international safeguards code, but we agree and have a common system. It would be impossible in our view to obtain such a code because, as is indicated here, there will be a mirror of legislation in other countries, you can rest assured. We are going away from agreement not toward it, and the idea of diluting the causation by saying the recession is throwing that cause out.

So, I would urge the committee to think twice because the impact would be very serious in any future safeguards negotiations.

Chairman GIBBONS. Mr. Frenzel.

Mr. FRENZEL. Thank you, Mr. Chairman.

I want to ask Mr. Aitken again because it has been stated and restated before this committee about the so-called GATT standard. I would like to have that laid to rest this matter Mr. Gibbons said he would like to have detailed for the committee and for which he is keeping the record open.

A number of committee witnesses have come before us and called this reduced causation factor the GATT standard. I would like to have you say again what the GATT standard is and how this relates to it.

Mr. AITKEN. Mr. Frenzel, I am happy to do it. This is contained in paragraph 1a article XIX. I will simply read it into the record.

> If, as a result of unforeseen developments and the effects of the obligations incurred by the contracting party under this agreement, including the tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers, then import relief may be imposed.

As I mentioned in my answer to Chairman Gibbons, that standard is epitomized in the EC's escape clause which is their article 9, regulation No. 288/82——

Mr. FRENZEL. Would you read that, please.

Mr. AITKEN. Article 9, paragraph 1 of EC Council Regulation No. 288/82 provides that import relief may be imposed under the EC escape clause if "The substantial injury or threat of substantial injury to community producers resulting from such imports" can be demonstrated.

That is not "imports and other things." It is just imports. It is a "the cause" standard, not a "one of the many causes" standard or a "second on the list or third or fourth on the list" standard—which is the mythology of this trade debate that has been clouding this picture.

I think the other thing that needs to be put on the table, Mr. Frenzel, is when the proponents of gutting the causation standard of the escape clause come before you, they talk about the causation

standard, but they certainly don't talk about the scope. They don't say let's go back to a GATT standard but reduce the scope primarily to tariff concessions. No, that has to remain sacrosanct. They would go ahead and change the causation standard, but retain the broad scope. So it is an intellectually dishonest argument that is being made and I hope we can put it to rest for purposes of this record.

Mr. FRENZEL. I thank you for helping us do that.

Mr. Millet, I think you are correct in warning us about getting into section 201. As one of our previous witnesses called bureaucratic mess, the last refuge of scoundrels, I think it may be section 201. Here is a section where you find no one alleging unfair or improper activities but somebody wanting help. I understand you have objection to the mandatory nature of some kind of import sanction if the ITC is going to make certain findings.

Do you want to review that for me, please.

Mr. MILLET. Yes, Mr. Frenzel.

As I understand the discussion, it would make import relief mandatory if the ITC finds serious injury. That seems to me would violate the very basic principle of the escape clause that import relief has to be based on the national economic interests. An ITC determination would not consider, for example, a number of different issues that the President is required to consider.

Take, for example, the copper case. The President found the restrictions on copper imports back in 1984 would seriously disadvantage the copper fabricating industry.

I think other considerations such as the stake that consumers have are very important ones to be considered which the ITC really is not required to look into, so I repeat what I said in my statement that any statutory straitjackets of this type really should be avoided.

Mr. FRENZEL. Thank you very much.

The other thing that bothers me about that section is the establishment of a new dual track in either the conventional 201 relief or your industry may invent some new industrial policy plan to insulate you from competition for the next thousand years, and apparently the ITC can approve that or some kind of other plan. Does that make any sense to you?

Mr. MILLET. I think I would have difficulty dreaming up how we could prevent competition for the next thousand years, but some would like that.

Mr. FRENZEL. It depends on how well you ask for relief.

Mr. MILLET. I would like to say I can see where this proposal of auctioning quotas is one way which could certainly give someone an unfair advantage in getting too large a market share. I can see where that would come about.

Mr. FRENZEL. A witness a moment ago said how simple it was to auction quotas. Can anyone on the panel tell me how you would do it in your business and how it would be done between manufacturers and countries and importers and exporters? How would you do it?

Mr. FISHER. I think probably General Motors would wind up with the largest part.

Mr. MILLET. The one with the deepest pocket would certainly get the benefit of it. I don't understand how you can possibly regulate an industry such as the automotive industry or establish standards for an industry like the automotive industry.

In our association alone, we have a total of 19 manufacturers who are bringing in a wide range of product line.

The other thing is earlier today they were talking about a "scarcity rent," that this proposal to auction quotas was some sort of rent that the American public would benefit from. I don't quite appreciate that. It would seem to me the American public is going to do nothing but pay an additional amount for this quota. It comes down to paying a tax for the scarcity of the product.

Mr. FRENZEL. Good point. Mr. McElwaine, did you have a comment?

Mr. MCELWAINE. I think Mr. Millet covered it rather well, Mr. Frenzel. We do have quotas on Japanese automobiles today. They are apportioned by the Japanese Ministry of International Trade and Industry, and the consequences of those quotas are so apparent today it is very hard for me to comprehend that people would endorse the idea of quotas as a trade remedy at all. What you have created with these quotas is the classic operation of a cartel whereby the market is apportioned between the Japanese manufacturers by the government, eliminating any price competition for the Japanese manufacturers themselves which results in the end of any price competition between them as a block and the domestic manufacturers as a block.

So, according to the Brookings Institution, we have $12 billion in additional cost being borne by the consumers in the past year alone for automobiles. This is $12 billion of expenditures taken out for other goods and services they might buy in this country. I think the record of the quota on Japanese automobiles should absolutely end any illusions anyone might have that that quotas to serve any useful purpose.

Mr. FRENZEL. I think often that you and I are minorities in this hall but how would you do it if you were USTR and you had to sell quotas?

Mr. MCELWAINE. I would hope that is a situation with which I would never have to deal. The manufacturer with the largest amount of money would get the largest quotas.

Mr. FRENZEL. Do you think no matter how you auctioned them, the wealthiest bidder would walk away?

Mr. MCELWAINE. I think Nissan-Datsun and Toyota would walk away and Mitsubishi and Subaru would end up with something.

Mr. GRAVES. I believe the gentleman talked this morning about a specific industry in Australia and New Zealand and when the chairman questioned him how far his research went to other industries, he did not have the answer.

Mr. FRENZEL. We will try to get more information from him.

Mr. GRAVES. In all practicality, we don't think it will work.

Chairman GIBBONS. There won't be any quotas on automobiles because I don't think the Japanese Government would allow it.

Mr. MCELWAINE. I was using that as an example.

Chairman GIBBONS. I guess I should have asked Mr. Nakasone yesterday why in the world would they do that.

Mr. MCELWAINE. Today to continue them is merely a price maintenance device, I think.

Mr. MILLET. It was not with our blessing.

Chairman GIBBONS. I hope you let them know.

Mr. GRAVES. The independent franchised dealers were not the recipient of the increase in the VRA's not this year but last year the domestic manufacturers were.

Chairman GIBBONS. I would agree with you there is no good reason for quotas. The trouble is some of the Members of the Congress love them. In 1973 and 1974, when we voted on this before, I tried to establish a priority or a hierarchy and put quotas at the end and I got badly mauled on that question. I cannot envision any worse situation then than the political situation now.

Mr. MCELWAINE. Certainly the big three like them very much. Ford has declared a 53 percent stock dividend. In the past 3 years, the big 3 have earned profits right around $25 billion after taxes which is more than they ever earned in any decade in previous history. I think they like quotas very much. I would think the stockholders would be very happy. What surprises me is the labor unions still endorse quotas because there is just insurmountable evidence that quotas are keeping employment down in the domestic auto industry and why labor continues to endorse that, I will never understand.

Chairman GIBBONS. I thank you gentlemen for coming here and would appreciate your helping us with that list argument. Thank you very much.

That concludes the hearing for today. We will resume again tomorrow in this room at 9:30.

[Whereupon, at 4:09 p.m., the subcommittee was recessed, to reconvene at 9 a.m., Wednesday, April 16, 1986.]

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TRADE REFORM LEGISLATION

WEDNESDAY, APRIL 16, 1986

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

Chairman GIBBONS. I am sure all of you know who are not lost this morning this is a meeting of the Subcommittee on Trade of the Committee on Ways and Means. We are happy to have as our first witnesses this morning, Mrs. Barbara Kennelly and Mrs. Nancy Johnson. And I have got you down here as a panel but we can take you individually and then discuss this situation with you.

I appreciate both of you coming, and I appreciate the interest and expertise that you bring to this subject matter.

Barbara.

STATEMENT OF HON. BARBARA B. KENNELLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mrs. KENNELLY. Thank you, Mr. Chairman. I am delighted to have this opportunity to appear before you today to discuss one aspect of our Nation's trade deficit: the impact of that deficit on our national security.

The events, Mr. Chairman, of the last few days have demonstrated, if any of us needed to be reminding how our Nation's strength may be called on, at any time, in any region of the world. The facts of life in the late 20th century are these: we must be strong, we must be prepared, and we must be ready. No different than when you served in the Second World War.

One of the most disturbing aspects of the trade deficit—a deficit that now approaches $150 billion—is its potential impact on our strength and our readiness. It has been said that an Army fights on its stomach. But just as surely, a nation fights on its basic industries. The $1 trillion we have spent on our defense will be all but worthless if we do not have the surge capacity to meet wartime needs. Unless we take steps now to stop the erosion of security caused by the trade deficit, we will wind up needing the President's high-speed Tokyo Express—to shuttle ball bearings and machine tools across the Pacific if we find ourselves in a war situation.

There is one provision of our trade laws expressly designed to deal with the national security implications of trade. A provision similar to section 232 was originally enacted in 1954 in response to

very real bottlenecks of crucial defense items during the Korean war. It was intended to prevent our defense capacity from being injured by acute shortages of badly needed defense items.

In 1962, Congress again recognized the importance of maintaining our defense manufacturing base. Section 232 was included in the Trade Expansion Act of 1962, which authorized the Kennedy round of GATT negotiations. It was an explicit recognition that increased imports as a result of lower tariffs might injure domestic industries vital to national security. Among the industries that might be affected were, for example, steel, machine tools, ball bearings, and other basic products necessary for metal working.

At that time, Mr. Roswell Gilpatric, Deputy Secretary of Defense, testified on section 232 before the House Ways and Means Committee. He said:

> I want to see certain safeguards. That is why I refer to the importance of section 232. We must always keep in mind the importance of maintaining our own defense industry in this country. I think interdependence is important, but I always want to have, right here at home, an industrial base which we can look to for our support of our military establishment.

Congress agreed. Section 232 provides for import relief for industries vital to this country's national security. This provision is fully consistent with GATT, which permits import relief on national security grounds.

A firm or industry seeking relief under section 232 files a petition with the Secretary of Commerce. The Secretary must investigate the complaint and forward a report to the President within 1 year. The President then makes a determination on whether relief is justified. There is, however, no deadline for Presidential action.

This is a loophole big enough to drive a tank through. I find it incomprehensible that we would design a trade law explicitly to protect national security, and then leave these cases to languish indefinitely. I am not talking about a theoretical problem, but one that is very real. As you know, Mr. Chairman, Secretary of Commerce Malcolm Baldrige made his recommendations to the President on the machine tool case on February 28, 1984. It is now April 16, 1986. More than 2 years have passed. The White House has not said yes or no, or even maybe. And this is a national security matter.

I have talked frequently with Commerce Secretary Baldrige, U.S. Trade Representative Clayton Yeutter, and many others about this agonizing delay. I can say that all of them believe this holdup is absolutely inexcusable.

Last year, I introduced legislation, H.R. 3986, to close this loophole by setting a deadline for Presidential action in section 232 cases. I am pleased that the draft discussion bill now before the committee sets a deadline of 60 days for deciding future or pending cases.

You will hear today from the Machine Tool Builders' Association who will give you a fuller description of the frustrations they have encountered in seeking a resolution of their case. But frustration is the least of their or our problems. In the 26 months since the machine tool petition reached the White House, imports have soared 27 percent. Nearly 50 percent of machine tools sold in the United States are now made abroad.

For weeks, months now, we have heard that a decision on machine tools is near, and I hope this is so. But the need for revisions in section 232 will still remain. It was designed to prevent bottlenecks in meeting our defense needs. Now we should redesign it to avoid bottlenecks in the White House as well.

Mr. Chairman, I thank you for this opportunity to testify.

Chairman GIBBONS. Well, thank you, Mrs. Kennelly.

The next witness is Mrs. Nancy Johnson.

STATEMENT OF HON. NANCY L. JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mrs. JOHNSON. Thank you very much, Mr. Chairman. It is a pleasure to be here this morning, and I am honored to testify before you and your panel.

Let me start by saying that I am just going to summarize my testimony which is rather long, and I am going to start from the back saying that I strongly support what Barbara has said in support of the need for reform of the 232 petition process. I am a cosponsor of legislation similar to hers, but we are both thinking along exactly the same track, having come from very similar experiences. And we commend you—I join her in commending you in making that recommendation in your bill.

I will, because she has covered that so thoroughly, cover some other things of equal interest to me.

First of all, I think it is of enormous importance that we do pass a trade law reform bill this session. I believe it can be a bipartisan bill. I think the notable thing about the Republican package and the Democratic package are their similarities rather than their differences, and this is one area in which I think the Congress is capable of providing a very strong signal to the international community as to our commitment to a fair competitive environment in which we know American companies can survive well.

There are three things that I want to mention briefly, Mr. Chairman, in addition to the importance of reforming the 232 process. The first one is market access; the second is export financing, and the third is dumping.

I concur with the subcommittee position that we must demand equal access to foreign markets for our products. Forceful bilateral negotiations coupled with prudent use of section 301 can achieve greater reciprocal access. And while I applaud the administration's self-initiation of certain 301 cases, I believe we need to shorten the time frame for such actions and make other reforms in that process as you have laid out in your draft bill. I support those reforms strongly.

I do appreciate the subcommittee's recognition of the need for these changes, particularly in regard to the telecommunication sector. But I hope we will adopt legislation that is not sector specific. Because the same problems that the telecommunications industry faces are the problems that other less visible industries are facing. And I hope we will broaden the language of that section so that it will serve all the businesses of America. So I recognize the importance in the technological leadership issues at stake in the telecommunications area.

But to indicate how keenly I feel this in the basic manufacturing area, I do refer in my testimony to a major American company that can deliver in Tokyo manufactured products of competitive quality at a competitive cost right onto the Tokyo market and has not been able to get into the supplier chain, has not been able to get in the "aftermarket" because when they tried to buy a distributor the Japanese Diet took action to make that impossible.

So equity and reciprocal access is enormously important for basic manufacturing in America as well. And I urge your consideration of broadening language.

The export financing issue is one that I have long been interested in. Congressman Bonker has been a leader on that issue, and he and I have worked on it for many months and have incorporated to a large extent in H.R. 3667 the changes that we believe are important both to the administration's war chest proposal and request for targeting authority, which is very useful, particularly in the very competitive situation we find ourselves in in relationship to France and other competitors.

But that program has to be backed by a solid program which demonstrates commitment. Through this type of approach, I hope that we will be able to negotiate this issue out of the market. But as long as it is there, and other nations are using it, we cannot afford to allow major American companies to be outbid and undercut in deals that have 20- and 30-year follow-on business associated with them.

So I would like to commend to you the export financing work that has been done and is very near resolution in the body.

Last, let me just refer to the issue of dumping.

I recently had occasion to talk at great length to some of the semiconductor companies in America. And they are the technology drivers. And if they are not out there on the cutting edge, nobody else is going to be either.

They can compete. They can produce quality at a competitive price. But they cannot afford to compete with a company who is selling under cost for 1½ years, 2 years, 3 years. They cannot sustain the losses that some of our foreign competitors can sustain because they are competing with companies whose purpose it is to gain market share. And the issue of profit is secondary often only to the issue of market share.

Our companies do not have the kind of support, either government financing or cartel effort to enable them to survive that kind of onslaught attack. And so I feel very strongly that if we are to keep the competitive lead that we need, if we are to be the technologically strong as we need to be, we have got to respond much more effectively to these dumping situations. And I would urge you to adopt penalties that involve exclusion from the American market.

I think our competitors must know that at a certain point their goods will not be allowed in for 3 months. On second offense, their goods will not be allowed in for a year. And finally we will allow our Department of Commerce the power to exclude them permanently if they cannot compete in our market according to fair pricing rules which we impose on all American companies, and need to impose most rigorously and consistently on foreign competitors.

So I would urge that you consider much tougher penalties on dumping. I think that is the only thing that will motivate some of our competitors to change their ways and forgo the benefit that they currently get from dumping which is a strong position in the greatest market in the world.

Thank you for your leadership on this issue. I am very excited by your draft bill. I commend you particularly on the adjustment plan action.

When I was in Japan, we spent a lot of time with Sandy Levin and a number of the Northeast-Midwest Coalition members, talking with them about this. And I commend you on looking into new directions for all of us.

Thank you.

[The prepared statement and attachments follow:]

Statement of Rep. Nancy Johnson
Before the Ways & Means Subcommittee on Trade
April 16, 1986

Good morning. I am pleased and honored to have this opportunity to present my views on foreign trade matters to such a distinguished panel of experts. I favor passage of an omnibus trade bill and applaud this committee's work in drafting a vehicle for discussion of the kinds of changes we are going to have to make to remain competitive in the years ahead.

As many of you know, I represent the Sixth District of Connecticut, and I have witnessed the tragic decline in our manufacturing sector in hard-working Yankee towns like New Britain, Bristol, Torrington, and Enfield. Like many of you, I have seen my companies and workers struggle through periods of escalating energy costs, the pains of modernization, the cost of conforming factories to modern safety and environmental laws, and stiff competition from other regions of the country. We in the Northeast are meeting these challenges, but in the past decade we have encountered perhaps our greatest challenge yet: sophisticated international competition. It is fierce, and all too often it is unfair.

Jobs and competitiveness have been the dominant concern of my constituents and the focus of many of my efforts during my two terms here in Washington. I have testified previously, before Ways & Means and other panels, on my job training tax credit proposal (H.R. 1219), my welfare reform initiative (HR 880), and the Competitive Export Financing Act (HR 3296), which I introduced with Foreign Affairs Trade Subcommittee Chairman Don Bonker.

In my work, I have come to believe that America needs to develop a comprehensive trade strategy, an approach that couples trade law reform with more aggressive negotiating on market access issues and better support of American exporters. Last year I submitted a package of recommendations to House Minority Leader Bob Michel and worked together with Congressman Michel and other members of the leadership, including Phil Crane and Bill Frenzel of this panel, to craft a Republican trade package which we introduced last October. Less than two weeks later, a remarkably similar package came out of the Democratic Trade Task Force, and like measures have emerged in the Senate. Today, therefore, I am pleased to testify in support of the development of bipartisan trade policy reform.

I want to focus briefly on three problem areas: market access, export financing, and dumping.

Market Access

First, I concur with the subcommittee position that we must demand equal access to foreign markets for our products. Forceful bilateral negotiations coupled with prudent use of Section 301 can achieve greater reciprocal access and, while I applaud the administration's self-initiation of certain 301 cases, I believe we need to shorten the time frame for such actions, enhance the responsibility of the U.S. Trade Representative to adopt appropriate, reciprocal measures when aggressive negotiations don't create equivalent access for American companies. I appreciate the subcommittee draft bill's recognition of the need for these changes with regard to the telecommunications sector, but I hope we will adopt legislation that is not sector-specific and would apply the reciprocity principle to all sectors, to the benefit of all U.S. industries.

Only last week, I was told by a major U.S. company involved in the international sale and distribution of auto parts that, while they are currently producing at a price and quality that is competitive delivered in Tokyo, they have been unable to become a supplier to Japanese users of their product. When they tried to get into the "aftermarket" in Japan for repair or replacement parts, local distributors refused to deal with them. When they moved to purchase a distributor outright, the Japanese Diet raised the capital gains tax on such sales to 100 percent, effectively bolting the door shut against a competitive American firm -- though comparable Japanese products flow freely into our markets.

We cannot continue to tolerate such blatant discrimination. The power to gain equivalent access must be clearly present in our laws, as well as the commitment to that goal animating our efforts at the negotiating table.

Export Financing

Second, we all agree we must achieve an end to the use of tied aid credits. The resolution we passed by voice vote on Monday was useful to help our negotiators, who will soon try again in Paris to curtail the widespread practice of mixing foreign aid with export loans to subsidize lower interest rates, but we need to put our money where our mouth is. But I think we need to use the President's war chest proposal to beat them at their own game a few times but adopt as well a solid program to ensure competitive financing to America's producers both to nullify this unfair advantage enjoyed by exporters of other nations and to encourage negotiations to eliminate this practice.

The Johnson-Bonker approach, backed by the U.S. Chamber of Commerce and the National Association of Manufacturers, does just that and has been incorporated to a large extent in H.R. 3667. I believe it improves on the administration's war chest proposal and should be included in any omnibus trade bill as a critical part of our get-tough policy with our trading competitors.

Dumping

Third, the predatory pricing policies of our foreign competitors threaten American jobs in basic U.S. industries such as machine tools, ball-bearings, and semiconductors. Foreign firms are "dumping" goods in the U.S. market, in violation of U.S. laws and international agreements, by lowering prices below their actual cost of production in order to gain U.S. market share and elbow U.S. producers out of the picture. To date, we have not been able to stop the destruction that follows pricing policies consciously adopted by competitors that would be illegal for an American firm to adopt in our market.

Current remedies, which include the application of off-setting duties, have proven ineffective in deterring foreign firms from such vicious behavior. One firm I know of has been caught six times. Proposals to increase penalties and provide court remedies are, I understand, under consideration by this subcommittee for inclusion in the omnibus trade bill. I support these efforts but am not convinced they go far enough. I am proposing legislation to impose tougher penalties for those who adopt trade practices which are brazenly and blatantly unfair.

I believe we need legislation that will allow the Department of Commerce to temporarily exclude goods from the U.S. market when these goods have been offered at predatory prices in violation of the U.S. Anti-dumping Code. Incorrigible repeat offenders, producers or importers, should be threatened with the temporary

and possible permanent exclusion of their wares. Only the threat of tough penalties, such as exclusion for at least 90 days or up to a year, depending on your previous record for first-time offenders and tougher penalties for second offenders will prevent, for example, the pricing of semiconductors 188 percent below market value, as recently determined by the Commerce Department. Finally, if the Secretary of Commerce determines that a foreign producer demonstrates no respect for our laws, he or she may bar that company permanently from our market.

If we fail to adopt tough responses to those practices foreign companies adopt to gain a secure share of the market at the expense of what are often competitive American companies, then we cooperate in destroying the technological leadership that has made America great. As some conductor companies lamented to me recently, how can we be the technology drivers the nation needs, when we are asked not just to produce a competitive product at a competitive price but then to sustain great losses for long years as foreign companies are methodically underpricing goods to gain market share for as long as it takes to gain their strategic goals.

And finally, let me state my strong support for your proposed reforms to the Section 232 petition process. I don't have to detail for you the demise of the machine tool industry; John Duncan is a key member of this committee who cosigned my recent letter to the President urging positive action on the 232

petition, and hopefully we'll get a decision soon. But we've been waiting for three years, and that's ridiculous. That's why I was an original cosponsor of Lynn Martin's bill (HR 3438) which imposes a 90-day deadline on future 232 decisions and automatically approves pending Commerce recommendations. I am glad your draft bill includes provisions similar to these reforms we introduced in September 1985 and similar to a proposal submitted by Barbara Kennelly of my home state.

Conclusion

Commerce is America's lifeblood, but the vitality of our economy depends on our competitiveness on the international market. That competitiveness is threatened today by a number of factors, as this panel well knows, and I fully support your determination to craft prudent new trade legislation to assure U.S. businesses greater access to all markets and fairer treatment in our market and to assure U.S. workers the job security they deserve when they produce high quality products at competitive prices.

Thank you kindly for this opportunity.

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ECONOMIC DEVELOPMENT

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SUBCOMMITTEES
OVERSIGHT AND INVESTIGATIONS
HOSPITALS AND HEALTH CARE

SELECT COMMITTEE ON
CHILDREN, YOUTH, AND FAMILIES

September 25, 1985

NATIONAL TRADE STRATEGY

The U.S. must develop a comprehensive trade policy backed by prompt and effective enforcement of laws and international agreements if worldwide economic growth is to continue and the legitimate interests of Americans of all walks of life are to be protected. The significant impact of our domestic deficit and strong dollar on the trade deficit must not obscure the need for immediate action to strengthen the nation's trade laws, enhance our competitiveness through other domestic reforms, and commit ourselves in spirit and deployment of resources to aggressive enforcement.

TRADE LAW REFORM

RECIPROCITY: The Trade Reciprocity Act (Johnson)

- would give our USTR the new authority needed to react flexibly but forcefully and promptly to some of the most obvious, simple, but serious unfair trade barriers that harm American companies and to address foreign non-compliance with existing agreements.

- would mandate a report by the USTR on unfair trade barriers and require corrective action if existing agreements are being violated, or negotiations followed by corrective action if necessary, within a specified time frame.

COMPETITIVE FINANCING: The Competitive American Exports Act (HR 3296 - Johnson)

- provides resources to assist American companies in securing competitive financing for their exports by providing $500 million for Eximbank and the Agency for International Development (AID)

- gives teeth to a program to match foreign mixed credits, which are used extensively by foreign governments, to enable Connecticut firms to compete on a more even basis for major overseas projects which can involve many years of follow-on business.

- seeks to fight fire with fire and level the playing field for U.S. exporters until we can negotiate an end to mixed credits abuse.

SWIFT RELIEF:

- Reform Section 301 Process to assure timely review of problems by shortening the length of USTR investigations from 7, 8 or 12 months to 120 days and allowing the USTR only 30 days to respond and the President 15 days to disapprove (similar to HR 2607 - Donnelly...Johnson)

- Reform Section 201 Process by reducing the burden of proof of injury from foreign competition by altering the current requirement that imports be the "substantial cause" of injury to merely a "cause". This conforms with the GATT standard used by our trading partners.

- Reform GATT Dispute Settlement Process to require arbitration to resolve trade disputes within a specified period of time

TOUGH PENALTIES FOR COUNTERFEITING AND DUMPING:

- ban the entry of goods for one year from foreign manufacturers, distributors or shippers who have been convicted of a criminal violation of U.S. import law.

- establish a special customs fraud and intellectual property unit within the Treasury and Justice Departments to provide expertise necessary to assist U.S. prosecutors in complex customs cases.

- empower the USTR to revoke duty-free privileges granted under the Generalized System of Preferences (GSP) to any country which fails to enact and enforce effective laws against counterfeiting.

- strengthen penalties for dumping goods below-cost in U.S. markets in order to price American firms out of the business, by increasing fines and applying them retroactively to the point when the evidence confirms dumping was taking place, rather than simply to the point when preliminary ITC finding was completed.

STRONG ENFORCEMENT:

- increase number of Customs inspectors because the number of U.S. imports requiring quota review has increased by more than 50 percent while the number of Customs Service inspection staff has increased by only 2.4 percent and the number of import specialists has actually decreased by 8.5 percent. This has allowed for a significant increase in import fraud and a failure to collect millions of dollars in revenue from tariffs and fines which would more than pay for needed additional staff. (House 1986 budget provides for 800 additional Customs agents and estimates new revenue of 8 times their cost.)

DOMESTIC LAW & POLICY REFORM

JOB SECURITY:

- o National Training Incentives Act (HR 1219 - Johnson) encourages investment in human resources by providing private sector incentives for retraining programs to better equip the workforce for a rapidly changing work environment and enhanced competitiveness. It is estimated that the tax code will support expenditures next year for R & D and plant & machinery of $80 billion as against tax expenditures for human capital of $25 million, a ratio of 3200 to 1.
  - -- provides a 25 percent tax credit for private sector worker retraining programs, which would stimulate $4 in private investment for every $1 of federal money for retraining
  - -- allows withdrawal from Individual Retirement Accounts (IRAs) of up to $4,000 without penalty for retraining expenses
  - -- protects unemployment compensation by permitting displaced workers to enroll in employment training programs without penalizing their ability to receive unemployment benefits.
- o Trade Adjustment Assistance:
  - -- require study to restructure entire TAA program along the lines of Japan's Temporary Measures Law for the Structural Adjustment of Specific Industries
  - -- place adjustment initiative with firms in affected industries, two-thirds of whom must agree on an action plan that involves management, labor, and government
  - -- provide government assistance once a plan to restructure industry is agreed upon, which may require tax incentives, temporary relief from imports, worker retraining and relocation, and anti-trust exemptions

INTELLECTUAL PROPERTY RIGHTS:

- o enact the Process Patent Protection Act (HR 1069 - Moorhead... Johnson), which provides protection for patented manufacturing processes by prohibiting the selling, using, or importing of goods produced by a patented process.
- o provide proprietary information protection by amending the Freedom of Information Act to protect the rights of private firms to maintain the confidentiality of information with potential commercial applications

RESEARCH & DEVELOPMENT:

- enact the High Technology Research and Scientific Education Act (HR 1188 - Frenzel...Johnson), which extends the R & D tax credit permanently, targets tax credits at functional and technologically oriented R & D to assure that the incentive rewards productive business activity, and gives more generous credit for corporate basic research contracted out to universities to strengthen academic R&D capacity and encourage cooperation between the industry and university scientific communities

- enact the Federal Laboratory Technology Utilization Act (HR 695 - Michel...Johnson), which improves the transfer of technology from government laboratories to private industry

ANTITRUST REFORM:

- repeal section 7 of the Clayton Act, the incipiency standard which assumes harmful collaboration before the fact, to restore original intent of antitrust law, to prevent monopolies and collusion -- not mergers and joint ventures that will improve our competitive position internationally.

TAX REFORM:

- adopt a pro-competitive tax code that recognizes the realities of the global marketplace and provide incentives for U.S. industry to invest in the primary factors of competitiveness: capital, savings and investment, research & development, and labor.

TRADE REORGANIZATION:

- enact the Trade Reorganization Act (HR 3265 - Bonker...Johnson) which would create a new Department of Trade to strengthen and coordinate U.S. trade policies, give a higher profile to trade issues, and provide a single voice for U.S. trade policy

- expand government data gathering and analysis capabilities to document effect of trade policies and practices of other nations and other matters related to trade and industrial competitiveness issues.

EXPORT PROMOTION:

- strengthen the U.S. Foreign Commercial Service, which represents small businesses in negotiations with foreign governments and companies.

- require regular embassy reports on export promotion strategy and accomplishments in helping American industry improve its competitive overseas market position.

- o establish export promotion review teams comprised of prominent U.S. business executives to visit embassies and evaluate export promotion activities.

- o redeploy government resources to better focus on trade and export promotion; for example, transfer translators from USIA to Commerce and upgrade the positions of trade officials in our embassies to enhance their authority, credibility and access to foreign officials

DEFENSE INDUSTRIAL BASE:

Develop policies to assure critical industries the surge capacity vital to our national security and the security of the free world

- o enact the National Security and Trade Act (Martin/Johnson) which automatically implements the recommendations of the Secretary of Commerce on the Section 232 machine tool petition and requires the President to make future decisions on 232 cases within 90 days after the Secretary reports his findings and recommendations

- o press for favorable and immediate consideration of ball-bearing case before the International Trade Commission (ITC)

- o facilitate retooling of basic industries by allowing expensing of equipment purchases for 3 years where national security requirements are identified

- o evaluate defense procurement and competitive policies for impact on current capacity and surge capability of basic industries

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STATEMENT
on
UNITED STATES MIXED CREDIT (TIED AID) PROGRAM
for submission to the
SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY
of the
SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by
Michael A. Samuels*
November 6, 1985

The Chamber of Commerce of the United States welcomes the opportunity to comment on the issue of mixed credits. The Chamber has long been active in the development of an effective U. S. mixed credit program and commends the Subcommittee on International Finance and Monetary Policy for holding hearings on this issue.

The escalating U. S. trade deficit is a significant indicator of the strong pressure on U. S. producers to meet the intense competition for world markets. Yet, in the effort to reverse their declining global market share, American exporters must not only contend with the high value of the dollar but also with the determination of foreign governments to use both fair and unfair means to help their export sectors win business.

American exporters are willing and able to compete on commercial terms for foreign markets, but they cannot compete against the resources of foreign governments. They must, therefore, seek their own government's help in pursuing negotiations to eliminate mixed credits and other forms of predatory export financing; meanwhile, until negotiations are successful, they also must seek their government's export financing assistance. Lost export markets mean lost U. S.-based production and jobs, which are difficult, if not impossible, to regain.

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* Vice President, International Division, Chamber of Commerce of the United States.

For several years, the Chamber of Commerce has advocated a strong U. S. mixed credit program for the following reasons:

- o To defend U. S. exporters against foreign mixed credit activity, which is costing them business they would have won if the transaction had been conducted on a purely commercial basis.

- o To provide U. S. negotiators with bargaining power in the ongoing efforts to eliminate the practice through international agreement.

The mixed credit bills now pending before the Congress contain many features, some of which are excellent and some of which are deficient.

As we understand it, the following measures are being considered by the Congress:

- o S. 1763 (Heinz, R-PA) and H. R. 3515 (Wylie, R-OH), the Senate and House versions, respectively, of the Administration's "war chest" proposal.

- o H. R. 1857 (Lundine, D-NY), the Export Promotion and Fair Credit Act of 1985.

- o H. R. 3296 (Johnson, R-CT), the Competitive American Export Finance Act.

- o H.R. 3667 (Neal, D-NC), the Competitive Tied Aid Fund Bill

The Chamber urges the Congress to adopt a meaningful mixed credit program before the end of this session, and we strongly recommend that such legislation include the following:

- o Separate Funding

  Specific and separate funds should be appropriated for the U. S. mixed credit programs, similar to the approach in the Johnson bill,

which provides for $250 million each for the Export-Import Bank of the U. S. (Eximbank) and the U. S. Agency for International Development (USAID) for Fiscal Year 1987. USAID already has been allocated $50 million for both Fiscal Years 1986 and 1987 in Economic Support Funds (ESF). The Eximbank program must not be funded from its direct credit authority, which is already at minimal levels.

- o Retaining and Strengthening Existing Eximbank and USAID Mixed Credit Program

Mixed credits are by definition a mix of foreign aid and commercial export credits, which requires Eximbank and USAID to take a leading role in combating foreign mixed credits. These two agencies have an impressive record of effectiveness and experience in working with U. S. exporters.

- o Involvement of All Trade-Related Agencies in U. S. Mixed Credit Program

The control and direction of the U. S. mixed credit program should involve all agencies presently involved in U. S. trade policy. These agencies have expertise bearing on one or more aspects of individual mixed credit transactions, and this expertise must be used without adding an excessive bureaucracy. The National Advisory Council (NAC) arrangement should be retained as the basis for the inter-agency control while project decisions should be determined by a simple majority vote.

- o Maintaining U. S. Mixed Credit Program Until International Agreement Secured

An aggressive U. S. mixed credit program should be retained until it has reached its objective--the elimination of all mixed credit

activity according to international agreement. A two-year sunset provision would defeat this objective. One practical approach would invest the NAC with the responsibility of certifying when the negotiations have succeeded in ending mixed credit abuse.

o Timely and Responsive Action

The shortest possible deadlines should be followed in responding to an exporter's request for a mixed credit. Ten working days for a preliminary commitment and 30 working days for a final commitment, as provided in the Johnson bill, would be effective limits.

o Retaining and Strengthening the Matching Functions in U. S. Mixed Credit Program

A special effort to target export opportunities, to anticipate and preempt foreign offers, would be a welcome feature of the U. S. mixed credit program. This should not, however, be at the expense of matching functions: American exporters need support against foreign offers on a day-to-day basis.

The Chamber believes that the Johnson bill (H. R. 3296) provides a comprehensive vehicle for accomplishing these objectives. Most importantly, it responds to the imperative need for stronger and more flexible responses in support of U. S. exporters in day-to-day competition with foreign mixed credit offers; the proposed Administration "war chest" bill (H. R. 3515) would be a valuable supplement to the matching program; but in its present form, the bill contains provisions which would conflict with or violate the objectives cited above.

More specifically, H. R. 3515 and S. 1763 raise concerns on the following points:

o The "war chest" would eliminate the existing matching program of

Eximbank and USAID: the "war chest" should supplement the programs, not simply replace them.

- o The "war chest" proposal is too limited in its targeting approach: U. S. exporters need support in their day-to-day competition as provided in the matching program.

- o The "war chest" has a two-year sunset provision, which severely restricts the program's flexibility in responding to foreign market developments.

- o The program would be placed under the sole control of the Treasury Department, as opposed to meaningful participation by all trade-related agencies, as noted above.

In summary:

1. The Johnson bill (H. R. 3296) provides the basis for a truly strengthened U. S. mixed credit program that responds to the everyday needs of American exporters, while also providing our negotiators with enhanced bargaining power.

2. The "war chest" legislative proposal (H. R. 3515 & S. 1763), as presently drafted, ignores the President's mandate for export promotion by focusing too narrowly on targeting functions. By eliminating present Eximbank and USAID programs, it would leave U. S. exporters grievously unprotected against day-to-day foreign mixed credit competition.

The Chamber urges the Congress to act now to provide American exporters with the form of effective mixed credit support that is already available to their foreign competitors.

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Chairman GIBBONS. May I say, Mrs. Johnson, we are looking back at that section again. We are running into some problems with American industry and American labor on that adjustment section. And it is difficult to really reach a consensus in this area. But we are working on it.

Mrs. Kennelly, may I say you are certainly entitled to complain, and justifiably so, about the lack of decision in these areas that you complain about.

I can remember the discussion that we had many years ago with Mr. Mills about national security, and he thought that we just ought to leave really all of that sort in the hands of the President. But I do not think even Mr. Mills would agree that 2 years is a rational time to allow something to hang and to dangle there. I have no way of explaining the situation.

And as you pointed out, we have got a 60-day provision in the bill and I expect to fight for that all the way through.

Mrs. KENNELLY. Thank you, Mr. Chairman.

Chairman GIBBONS. And I appreciate what you have done there.

I am confused about all the lights up there. Looks like we have got a vote going on so perhaps maybe this is a good time to break, and thank you all very much for coming.

Mrs. KENNELLY. Thank you very much, Mr. Chairman.

Mrs. JOHNSON. Thank you, Mr. Chairman.

Chairman GIBBONS. Very good testimony. And without objection, your entire statements will be placed in the record at the end of your oral statements here.

And without objection, all written statements that are not read entirely into the record will be placed in full at the end of the presenter's oral remarks.

We will go vote and come right back. How about that?

Hate to keep you waiting, but fast as my little legs will go, we will get over there and get back.

[Recess.]

Chairman GIBBONS. Let us see. The Honorable William Thomas, the Honorable Joe Kolter, and the Honorable Olympia Snowe.

Mr. Thomas, we have you first on the list, and I want to thank each of you for coming here this morning to be with us and help us with the very vexatious problem that we have. And you may be assured that if you have a written statement, it will appear in the record as if delivered immediately following your oral remarks.

Bill.

STATEMENT OF HON. WILLIAM M. THOMAS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. THOMAS. Thank you very much, Mr. Chairman. And I do have a complete statement with a lot of data in it, and appreciate that submission.

Chairman GIBBONS. Well, I would expect that from you. I have traveled with you and I know how hard working you are. And I want to commend you for that hard work.

Mr. THOMAS. I appreciate this chance to discuss fast-track relief for perishable farm products, Mr. Chairman. I look forward to

working with you. I know there are a number of farm groups that are interested.

When I introduced legislation in this area last year, it was H.R. 2834. I have received a number of comments, many of them favorable, on this question.

Today's escape clause procedures mean up to 6 months may pass before the International Trade Commission makes recommendations on relief to the President. The President has another 60 days to decide whether to follow the ITC's recommendations.

For perishable crop producers, the entire marketing season may be over by the time action is taken.

The discussion draft's "fast-track" process addresses many of my concerns. Producers can get relief in a short time, and there is a clear list of perishable items eligible for relief. Further, relief is available only if the President ultimately decides there is reason to believe increased quantities of imports cause or threaten to cause serious injury to domestic industry.

So we are not discussing the sort of arbitrary minimum import pricing schemes the United States so strongly opposes.

I also appreciate its flexibility as it allows tariffs and quotas to be used to provide relief.

Having done a good deal of work on fast-track processes myself, Mr. Chairman, I have come to recognize some potential problems. The act's article XIX requires escape clause actions to be based on showings that increased imports cause or threaten to cause serious injury. We can avoid the delay of consultations if we find critical circumstances exist, those where delay would cause damage difficult to repair. We should give these requirements due consideration to avoid retaliation against U.S. exports.

GATT's role is important today. The United States and the European Community already are fast approaching a deadlock on farm trade. Our dispute about EC citrus preferences, of course, has led to U.S. retaliation against pasta products and EC retaliation against U.S. walnuts in return.

Enlargement of the European Community to include Portugal and Spain has led to disputes that, unfortunately, could lead to even more restrictions on United States farm exports. And both being Mediterranean countries, I have great concern about the kinds of products that will be involved in EC trade with these additions to the Community.

Now, so many of the people potentially injured by these disputes are the very specialty crop producers we seek to help with fast-track processes. I think we have to be very careful to avoid adopting procedures that could lead to new trade disputes.

Processes must also be useful to industry. Procedures must provide timely information to decisionmakers so relief is not denied simply because evidence cannot be marshaled fast enough. As well, the legislation we adopt should spell out as completely as possible who is eligible for relief and what the procedures are for requesting help. Unclear processes may discourage industries from seeking help. Further, we should note that in many cases preserved and fresh products can compete, and we may want to take another look at that factor in deciding what products are covered by fast-track legislation.

My bill, H.R. 2834, as I said, tried to answer these concerns through a different process than the discussion draft's. A summary of the bill is attached to my testimony, but I want to mention only three of what I consider to be the important aspects.

It relies on International Trade Commission findings, allowing petitioners to get interim relief in 52 days while they prosecute a full escape clause action.

Second, it restricts relief to petitioners ITC has reason to believe are likely to be irreparably harmed if relief is not provided, and the ITC believes likely to get an affirmative determination on the underlying section 201 case.

Finally, the bill recognizes that many fresh and preserved perishable crops are fungible and allows U.S. industries to seek relief from a wide variety of fresh and preserved imports.

H.R. 2834 was structured this way for what I consider to be important reasons. It tries to meet GATT requirements and to rely on the ITC. It also recognizes that ITC's work takes time. Accurate data have to be gathered.

Finally, it tried to list the products eligible for this relief so industries would clearly know what products were eligible and the nature of perishable crop markets is recognized.

In discussions with Government experts, several concerns with my approach came to light. I want to discuss them in case the subcommittee is offered comments along these lines. The primary concern is that the ITC cannot gather questionnaires from industry in a short time.

Even the CBI procedures raise doubts about how fast we can get data together. In response to questions I asked of USDA's Foreign Agriculture Service during the oversight subcommittee's hearings on the CBI fast-track system, I learned that that system has never been used. I was informed, however, that FAS would in essence rely on updated information in its files and on petitioners, information in making its decisions.

In the unilateral context of CBI or the negotiated free trade area we have with Israel, I think that is fine. Under the GATT, I am worried about the prospect that we might appear to be adopting the kind of political decisionmaking process we opposed when adopted by other governments. I am sure we do not want to legitimatize other governments' use of political import controls by our own action.

I have been offered some alternatives as answers to some of the problems apparently my bill raises. Briefly, I am told ITC may be able to make faster decisions if we selectively monitor imports. In the case of monitored products, ITC might make recommendations using the GATT "critical circumstances" requirement as a standard for recommending relief.

In addition, it has been suggested that we may be able to avoid possible administrative problems by giving the administering authority the power to decide which crops are truly perishable. Let me comment on this.

I like that monitoring idea because ITC would already have data needed for good decisions. I would like to see something like it included in any program we adopt.

Further, a totally discretionary monitoring process will scare some industries away from trying to get help if they need it. If we decide to grant discretion, I think we should tell the executive branch how it should be executed.

My full statement includes suggested criteria for limiting this discretion.

We could also provide a longer period for ITC to make decisions on unmonitored products, acknowledging the Commission's problems in gathering information from large numbers of respondents.

We should also be careful, I think, of how we treat this critical circumstances test. Critical circumstances is not well-defined. U.S. law on antidumping and countervailing duty actions only adds to the confusion. In both instances, retroactive relief is available if ITC finds an unfair trade practice and massive amounts of imports. But neither standard is really very clear. Unless Congress carefully defines critical circumstances, we could bring countervailing duty and antidumping law ambiguities into this process, and I know that is not what we want to do.

In this instance, Mr. Chairman, there are factors consistent with perishable crops we can use to define when the relief should be granted: Short marketing seasons, short product shelf lives, and other factors can help us decide what is critical.

I want to emphasize that the list suggested in my full statement should not be treated as exclusive. Other circumstances may on a case-by-case basis indicate that prompt relief is necessary.

And while I also agree that products beyond the CBI list should be considered perishable, I disagree with the suggestion that eligibility for relief should be decided on a case-by-case basis only. Too much discretion discourages industries from doing extra work needed to file.

I do appreciate the chairman's willingness to use the free trade area list of commodities to define eligibility. But I hope the subcommittee will also recognize that many fresh crops face stiff competition from preserved goods.

Ideally, I would like to see my legislation's list of fresh and processed fruit, fresh fruits and vegetables and nut products adopted by Ways and Means as part of the fast-track program. However, if a more restrictive list is to be used, I hope we will provide a list of criteria that can be used to identify unlisted perishable products that may be eligible for relief.

Again I appreciate your willingness to address the needs of perishable crop producers. I think we have worked well together in the past, Mr. Chairman. This is an important matter for many of the people in my district, and I do hope we can include a reasonable and responsible fast-track mechanism in this year's trade package.

Thank you very much for allowing me the time to go into it in some detail. And obviously I will follow this very closely.

[The prepared statement follows:]

CONGRESSMAN WILLIAM M. THOMAS
20th Congressional District, California
Before the Subcommittee on Trade
April 16, 1986

Mr. Chairman, I appreciate this chance to discuss "fast-track" relief for perishable farm products. This Subcommittee's efforts on the U.S.-Israel free trade area and the Caribbean Basin Initiative show you understand both perishable crops and that current import relief procedures may take too long for the crops' needs. I look forward to working with you on this problem.

You will also find that farm groups are willing to discuss changes in our import relief laws. When I introduced legislation in this area last year, I received a number of favorable comments from farm and produce groups. The California Farm Bureau, Florida Tomato Exchange, Apricot Producers of California, the American Dehydrated Onion and Garlic Association, the Florida Fruit and Vegetable Association and the California Asparagus Growers' Association have all expressed interest in this subject.

Today's "escape clause" procedures can mean up to six months may pass before the International Trade Commission makes recommendations on relief to the President. The President has another sixty days to decide whether to follow the ITC's recommendations. For perishable crop producers, this can mean an entire marketing season has passed by the time final action is taken.

The discussion draft's "fast-track" process addresses many of my concerns about our trade laws. Producers can get relief in twenty-one days. The list of perishable items eligible for relief is one accepted by Congress. Further, relief is available only if the President ultimately decides there is reason to believe increased quantities of imports cause or threaten to cause serious injury to the domestic industry. That requirement helps end fears that imports will be subject to the sort of arbitrary minimum import pricing schemes the U.S. strongly opposes. I also appreciate its flexibility as it allows tariffs and quotas to be used to provide relief.

Having done a good deal of work on "fast-track" processes myself, I have come to recognize some potential problems "fast-track" procedures face. My primary concern is that we recognize the General Agreement on Tariffs and Trade's limits on import relief. Article XIX requires "escape

clause" actions to be based on showings that increased imports cause or threaten to cause serious injury to domestic producers of like or directly competitive products. We can avoid the delay of consultation with other contracting parties if we find critical circumstances exist, those where delay would cause damage difficult to repair. My concern is that our "fast-track" procedures be acceptable under the General Agreement on Tariffs and Trade so we can avoid retaliation against U.S. exports.

GATT's role is especially important today. The United States and the European Community are already fast approaching a deadlock on farm trade. Failure to resolve our dispute about EC citrus trade restrictions has led to U.S. retaliation against pasta products and European Community retaliation against U.S. walnuts. Enlargement of the European Community to include Portugal and Spain has led to disputes that, unfortunately, could lead to even more restrictions on U.S. farm exports. As so many of the people potentially injured by these disputes happen to be the very specialty crop producers we seek to help with "fast-track" processes, I think we have to be very careful to avoid adopting new procedures that could lead to new trade disputes.

Another important point is that processes must be useful to industry. Procedures must provide timely information to decision makers so relief is not denied simply because evidence cannot be marshalled fast enough. Just as important, the legislation we adopt should spell out as completely as possible who is eligible for relief and what the procedures are for requesting help. Unclear processes may discourage industries from seeking help. Further, in many cases preserved and fresh products can compete and we may want to take a look at that factor in deciding what products are covered by "fast-track" legislation.

My bill, H.R. 2834, tried answering these concerns through a different process than the discussion draft's. A summary of the bill is attached to my testimony, but I want to mention three of its important aspects. First, it relied on International Trade Commission findings, allowing petitioners to get interim relief in 52 days while they prosecute a full "escape clause" action. Second, it restricts relief to petitioners the International Trade Commission has reason to believe are likely to be irreparably harmed if relief is not provided and the ITC believes likely to get an affirmative determination on the underlying section 201 case.

Finally, the bill recognizes that many fresh and preserved perishable crops are fungible and allows U.S. industries to seek relief from a wide variety of fresh and preserved imports.

H.R. 2834 is structured this way for important reasons. It tries to meet GATT requirements and to rely on the ITC. It also recognizes that ITC's work takes time; accurate data have to be gathered. Finally, it tried to list the products eligible for this relief so industries would clearly know what products were eligible and the nature of perishable crop markets is recognized.

In discussions with government experts, several problems with my approach came to light and I want to discuss them in case the Subcommittee is offered comments along these lines. The primary problem is that the ITC cannot gather questionaires from industry in a short time.

Even the CBI procedures raise doubts about how fast we can get data together. As part of the Oversight Subcommittee's recent hearings on the Caribbean Basin Initiative, I asked USDA's Foreign Agriculture Service a series of questions about the operation of the CBI "fast-track" system. While that system has never been used, FAS did relate how it expects to handle requests. In essence, USDA will rely on updated information from its files and on information supplied in petitions in making its decisions.

In the unilateral context of CBI or the negotiated free trade area we have with Israel, that is fine. Under the GATT, we could appear to be establishing the kind of political decision-making process we oppose when adopted by foreign governments. My concern is that we could legitimize foreign governments' use of political import controls while adding to risks of retaliation against U.S. farm exports unless it is very clear that our procedures are objective.

I have been offered some alternatives that may answer some of the problems my bill raises. First, the International Trade Commission may be able to make faster decisions if it selectively monitors imports. In the case of monitored products, ITC might make recommendations based on the GATT "critical circumstances" requirement. In addition, we may be able to avoid possible administrative problems by giving the administering authority the power to decide which crops are truly perishable. Let me comment on these arguments.

Monitoring, an idea I would like to see included in any program we

adopt, could be conducted by letting the administering authority select crops for ITC to follow. When "escape clause" actions are filed, ITC would already have data needed for good decisions.

There are, however, problems with this approach. First, it could keep unmonitored products from getting relief. That is unacceptable, as industries that can compile information on their own should also be able to get help. Further, a totally discretionary monitoring process will scare industries away from trying to get help when they need it. They will not use processes without some assurance that relief is attainable.

To solve these problems, we could provide a longer period for ITC to make decisions on unmonitored products. ITC makes preliminary decisions in countervailing duty and anti-dumping cases in 45 days; perhaps a period of 45 to 60 days would be appropriate.

I would also adopt criteria to guide the administering authority in deciding which products to have ITC monitor. The following list of nonexclusive factors might be considered:

1. The request should show there is a pattern of increasing imports over some historical basis (either in absolute or relative terms);

2. The petitioner should show reasonable indications of low profit margins, declining profits or some threat of these things;

3. The request should come from a petitioner representing the affected U.S. industry; and

4. The request must involve a perishable product.

We should also be careful of how we treat the "critical circumstances" test. The test is not well defined, and U.S. law on anti-dumping and countervailing duty actions only adds to the confusion. In both instances, retroactive relief is available if ITC finds an unfair trade practice and "massive" amounts of imports. Neither standard is clear. Unless Congress carefully defines critical circumstances, we could bring countervailing duty and anti-dumping law ambiguities into this process, and I know that is not what we want.

In this instance, there are factors consistent with perishable crops we can use to define when relief should be granted. Short marketing seasons, short product shelf lives and other factors can be used to decide what are critical periods. The following criteria might be used to meet this need:

1. a history of declining U.S. productive capacity;

2. a history of lost U.S. industry sales;

3. current lost sales;

4. rapidly increasing imports, or a continued growth of imports in absolute or relative terms;

5. low U.S. industry profits or continuing U.S. industry losses;

6. large foreign productive capacity that could result in additional imports;

7. large foreign inventories of the product; or

8. market entry barriers in other potential markets that could direct future increases in world trade to the U.S. market.

I want to emphasize the list should not be treated as exclusive. Other circumstances may, on a case-by-case basis, indicate that prompt relief is necessary.

While I also agree that products beyond the CBI list should be considered perishable, I disagree with the suggestion that eligibility should be decided on a case-by-case basis. Too much discretion discourages industries from using a procedure or doing extra work needed to file in the first place. I do appreciate the Chairman's willingness to use the free trade area list of commodities to define perishable, but I hope the Subcommittee will also recognize that some fresh crops face stiff competition from preserved goods. Ideally, I would like to see H.R. 2834's list of fresh and processed fresh fruits and vegetables and nut products adopted by Ways and Means as part of a "fast-track" program. However, if a more restrictive list is to be used, I hope we will provide the executive branch with a list of criteria that can be used to identify perishable products other than those eligible for relief under the discussion draft. Some factors that can be used to define perishability might be:

1. the product (fresh) has a short shelf life (under a year);

2. the product is directly competitive with or like a fresh product;

3. The fresh and processed products' production is largely integrated in the U.S.

Using these criteria would provide the administering authority power to handle unlisted products without forcing Congress to go through the tedious process of identifying them.

Again, I appreciate your willingness to address the needs of perishable crop producers. This is an important matter for farmers and I hope we can include a "fast-track" mechanism in this year's trade package.

H. R. 2834
BILL SUMMARY

1) The bill would create a new section 204 (19 USC 2254), allowing interim relief to be granted to perishable commodities industries under extraordinary circumstances.

2) Petitioners are eligible for relief if:

A. they have filed or simultaneously file a section 201 petition with the International Trade Commission, or the perishable product which is the subject of their request must already be the subject of an ongoing ITC section 201 investigation;

B. they file a request for interim relief within 75 days of the Commission's receipt of a petition under section 201(a)(1) or the institution of an investigation of its own motion under section 201(b)(1); and

C. the subject 201 case involves at least one of the listed commodities.

3) Procedures governing awards of relief:

A. International Trade Commission must make its decision on whether to recommend interim relief with 45 days of the interim relief petition's filing. International Trade Commission must consider petitions for interim relief.

B. International Trade Commission would recommend relief only if the Commission has reason to believe:

(1) that the domestic industry producing a perishable product like or directly competitive with the imported perishable product is likely to be irreparably harmed if interim relief is not provided, and

(2) that the facts indicate the Commission is likely to make an affirmative determination at the conclusion of the investigation that imports are in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

C. In the event the Commission makes an affirmative interim determination, it shall recommend relief in the form of a tariff or tariff-rate quota, unless it finds that the provision of relief in that form would be ineffective. In the latter event, the Commission may recommend relief in the form of a quantitative restriction or a combination of a tariff (of a tariff-rate quota) and quantitative restriction.

D. The President shall have no more than 7 days after receiving the International Trade Commission report in which to decide whether to grant relief under this section. A statement of his decision, and his reasons for making that decision, shall be published in the Federal Register.

E. Presidential action in the event of an affirmative interim Commission determination:

(1) If the President determines to provide relief, he shall provide relief in the form of an increase in or imposition of a duty or a tariff-rate quota on the article causing injury, unless he finds that relief in such form cannot effectively prevent irreparable harm.

(2) If he finds the latter, he may proclaim a modification of or the imposition of a quantitative restriction on such article or proclaim relief in the form of a combination of such actions.

(3) When relief is provided in the form of a duty or tariff-rate quota, imports may enter under bond pending a final Commission or Presidential action.

E. Terms under which relief will be applied:

(1) Relief is effective 5 days after being declared by the President;

(2) Interim relief shall terminate on the day on which either the Commission notifies the Commissioner of Customs of a negative final Commission determination or the President determines not to provide relief after receiving an affirmative final Commission determination. In the event of a negative Commission determination, the Commission shall promptly notify the Commissioner of Customs of such action, and, to the extent feasible, such notification shall be made prior to the transmittal of the Commission's final report to the President.

(3) Any bond posted by importers under tariff relief authorized by this section will be released to the importers if the Commission determines at the end of its full investigation that the domestic industry is not eligible for import relief.

4) Section 203(j) is amended to provide that, only for perishable commodities subject to this section, only one year must pass after section 203 relief ends before new petitions may be filed seeking additional relief.

Chairman GIBBONS. I know you will, and I would encourage you to sit down and talk with our staff, please, about some of these things. We are in the process now of putting together another discussion draft. And I would like to be accommodating in this area.

Mr. THOMAS. Thank you very much.

Chairman GIBBONS. We have got problems. And I think you have got a reasonable approach there.

Mr. THOMAS. Thank you very much, Mr. Chairman.

Chairman GIBBONS. Let us see who we list next. Mr. Kolter.

STATEMENT OF HON. JOSEPH P. KOLTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. KOLTER. Thank you, Mr. Chairman.

Mr. Chairman and members of the Subcommittee on Trade, I am pleased to have this opportunity to testify before you on the subject of trade law reform. I will focus my brief remarks on the urgent need for changes in the antidumping and countervailing duty statutes. My specific recommendations echo those being proposed by the Trade Reform Action Coalition. It is my understanding that the committee has received copies of the issue papers and legislative language from representatives of the coalition.

Historically, the antidumping and countervailing duty statutes have served as the backbone for efforts by domestic industries to secure relief from unfair trade practices. It is ironic that with many calling for removing Presidential discretion from the trade laws, that those very statutes which contain no element of discretion are not receiving the attention they deserve. While I applaud the subcommittee's accomplishments in helping pass needed dumping and subsidy law reform in 1984, I fear that if further improvements are not made in these workhorse laws, American jobs will continue to be lost.

There are four proposals being made by the Trade Reform Action Coalition that I would like to highlight.

First, action is needed to combat diversionary practices designed to circumvent existing laws, dumping or countervailing duty orders, or import restraint agreements. These practices involve the use of dumped or subsidized products as raw materials or components in downstream products.

An example that hits home in my district involves electrical steel which is covered by a voluntary restraint agreement. Instead of being exported to the United States in sheet form, electrical steel is manufactured into electrical motor laminations offshore and then sold here in competition with domestic laminations. Under current law, the domestic lamination producer cannot base a dumping claim on the fact that the electrical steel has been dumped, nor can a subsidy claim be brought if the steel has crossed a national boundary. Unfortunately, our current laws seem to encourage foreign producers to circumvent such measures as the steel restraint program approved by Congress in October 1984.

Both the House and Senate recognized the problem in 1984, but the corrective measures were stricken in conference. I urge the subcommittee to reconsider and address these crucial issues in its trade legislation.

A second issue that needs consideration is cumulation of dumped or subsidized imports from a number of countries in the determination of whether a domestic industry has been materially injured. Congress directed the International Trade Commission to aggregate unfairly traded imports in the Trade and Tariff Act of 1984, yet Commission practice has been to not cumulate in a variety of situations where it should have. The decision of the U.S. Court of International Trade in the construction casting case earlier this year is an example of where the ITC should have used this authority.

Third, domestic parties injured by dumping should have the opportunity for an effective private remedy for past damage caused by dumping. Under current law, any relief is prospective only. Hemorrhaging is permitted to continue while the petitioner is awaiting a decision. In addition, should the petitioner win relief, any additional duties flow to the U.S. Treasury and not to the injured industry. Perhaps a portion of any additional duty placed on dumped imports could be used in funding retraining programs under the Job Training and Partnership Act, or other adjustment assistant programs that were created to assist displaced workers and firms.

Last, domestic industries need a better way to secure relief from import surges in response to a trade case filing. It is an unfortunate fact that foreign producers commonly increase imports upon the filing of a case to get those shipments in before additional dumping or subsidy duties are imposed. Current law is vague on exactly when these surges constitute critical circumstances, and can result in the early imposition of duties.

Mr. Chairman, two additional points I would like to make that are separate from the Trade Reform Action Coalition proposals are as follows:

I urge the subcommittee to address circumvention of the Steel Import Stabilization Act which was part of the Trade and Tariff Act of 1984. Nations that have signed voluntary steel export restraint agreements have devised ways around these arrangements by shipping steel, otherwise subject to the arrangements, to countries that are not signatories to those arrangements. After additional processing, the steel is then shipped to this country.

The result is that an arrangement country can effectively increase its shipments to the United States by shipping steel to uncovered countries, without having that steel count against its negotiated level. Two recent instances involved Brazilian flat-rolled steel shipped to Panama to make oil country tubular goods, and Korean steel being transformed into electrical conduit in Costa Rica. Mr. Chairman, let us try to stop this circumvention before it becomes a serious problem.

Finally, it was brought to my attention that Japan was rolling silicon electrical steel to a thickness fractionally less than the specifications in the U.S. Tariff Schedule. Under our VRA with Japan, this high value steel fell under a much more generous category. Consequently, imports surged late last year. The situation is now under control, and I have introduced a bill to permanently adjust this anomaly. What I would like to know is, how many other such anomalies exist in the Tariff Schedule? Mr. Chairman, could the committee direct the Customs Service and the International Trade

Commission to review the Tariff Schedule in consultation with interested parties and then take steps to correct any problems discovered?

In closing, Mr. Chairman and members of the subcommittee, I would like to thank you again for this opportunity to testify. I urge you to address these issues in your current efforts.

Thank you very kindly.

Chairman GIBBONS. Thank you, sir.

We constantly are running into these anomalies in the Tariff Schedules. But you have got to remember these Tariff Schedules are older than the United States. I wish we had some way to get all the anomalies out. But it seems that the mind of the human is far overproductive in dreaming up ways to get around these things. And we have been able to build this indefensive wall.

Mr. KOLTER. Well, Mr. Chairman, is there a possibility that this committee could in fact review just the several that I mentioned?

Chairman GIBBONS. We do constantly keep those under review. In fact, the one that you complained of I think was taken care of in the tax bill last year. But, you know, I know of no piece of legislation that has got more arbitrary classifications in it than this Tariff Code. And frankly we are always behind the curb in trying to catch up with the inventive mind of the same kind on these anomalies.

But we will keep working on it. I want to assure you of that. Any time you catch one, you let us know. We would like to get rid of them.

Mr. KOLTER. Thank you, Mr. Chairman.

Chairman GIBBONS. And we will follow those.

Now Ms. Snowe.

STATEMENT OF HON. OLYMPIA J. SNOWE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MAINE

Ms. SNOWE. Thank you, Mr. Chairman and members of the committee.

I want to thank you, Mr. Chairman, for providing me with this opportunity to testify on one of the more critical subjects that we, as Members of Congress, will have to address during this session of Congress.

I think there is a growing national consensus that the concept of free trade is an American myth when other countries are beginning to erect trade barriers to our exports, and are also targeting exports to our country, which is the most lucrative, obviously, and one of the most open markets in the world.

I appreciate the fact, Mr. Chairman, that you are willing to tackle the overwhelming job of restructuring our trade laws. My district has undergone unparalleled devastation from the unfair trading practices of foreign nations and the failure of our policy and policymakers to respond to this challenge.

My testimony here today will outline just some of the extreme problems that my industries and my State have been facing along with some recommendations for reconstructing and redeveloping over trade laws, so that we can create an evenhanded, balanced and fair trade policy. Lack of such a policy in the past, as well as

in the present, has imperiled the shoe, textile, lumber, fishing, and potato industries in the State of Maine. In industry after industry, foreign subsidies, as well as limitless import growth, have joined with barriers to our products to wreak havoc in our State.

Maine's shoe industry is one such example. It has lost more than a third of its work force in the last 10 years. In 1985 alone, we lost more than 4,000 jobs and 30 industries have closed their doors. Presently, their prospects are deteriorating in the absence of any action taken by the President or Congress.

Our country is virtually alone in having an open market with respect to imported footwear. So while Japan allows 1 million pairs of shoes to enter its country each year, that is the equivalent of the amount of imported footwear we allow in the United States every 12 hours.

As a result, imports now account for 80 percent of the domestic shoe market. When the footwear industry in 1985 sought relief under section 201 of the Trade Act, as they have done six times previously since 1970, they were refused. Even after the International Trade Commission had made a positive recommendation with respect to imported footwear, the President rejected such a recommendation. And so our relief procedure fails even in light of a clear-cut example where the industry suffers from 80 percent import penetration.

The potato industry in Maine filed an antidumping case against Canadian imported potatoes. They started in 1982, and from 1982 to 1985, they struggled with this case with the International Trade Commission. In 1983, the Department of Commerce ruled and recommended a 36-percent duty on Canadian potatoes in light of the Canadians' unfair trading practices and a host of subsidies that they provide to their potato farmers. However, as we could except, no real or beneficial action came from the International Trade Commission. It ruled against the injury determination.

In 1985, after the industry was rejected by the ITC, they went before the Court of International Trade, and again they lost their appeal. I would note the unusual and extraordinary length of time it required this industry to pursue a case. It was over 3 years, and we are dealing with a perishable commodity.

Further inconsistencies and flaws can also be viewed with problems that are now being encountered by the fishing industry in the State of Maine, which has now petitioned the International Trade Commission with a countervailing duty case. That case is before the ITC. It started in 1982 with a factfinding hearing. The Canadian Federal and Provincial governments have provided their fishermen with substantial market advantages compared to our domestic counterparts in the Northeast. In fact, the Department of Commerce has acknowledged that Canada supports its fishing industry with 55 different kinds of subsidy programs. On that basis, the Commerce Department made a determination that Canada provides a 5.8-percent subsidy on their ground fish imports. However, the Department of Commerce did not include one of the more substantial subsidy programs that the Canadians provide their fishermen. Had they included the seasonal unemployment compensation program, the subsidy level would have jumped to at least $20 million or 10 percentage points higher than their official level and the

one that was recommended by the Commerce Department. Again, we have an inconsistency in our trade laws which works against our industry and our workers' interest.

The fact is the Commerce Department said that this was not a labor-related subsidy, believing that this program does not provide preferential treatment to the workers in Canada because all workers receive regular unemployment compensation.

We also saw this problem with respect to the timber industry, as you are well aware, Mr. Chairman, when the timber industry filed a countervailing duty petition against Canada. And the basis for this case, again, lies in the fact that the Canadian Federal and Provincial governments essentially buy down the cost of lumber to about 10 percent of the cost in the American market. This undoubtedly provides our Canadian companies with an insuperable market advantage to the extent that they control 80 percent of the market in the Northeast. And when you think of the fact that I represent a district in the State of Maine which is 90 percent forested, you can imagine the devastation that it has imposed on my district.

The ITC even found that these imports were causing serious damage to our domestic industry. But as happens time and time again, in this instance the International Trade Administration of the Department of Commerce found a technicality in our laws which prevented our Government from acting on behalf of one of its injured industries.

The ITA said that the timber was not subject to a countervailing duty since the subsidy was also made available to other industries such as pulp and paper and the furniture industry. So if I read that message correctly, it suggests that an isolated subsidy is not permissible, but economywide subsidies are permissible.

With all of these inconsistencies, flaws, roadblocks, and the accompanying frustrations, Mr. Chairman and members of the committee, you can understand why I am particularly grateful that I have had this opportunity to speak before this subcommittee, and that this subcommittee is in the process of undertaking a restructuring of our present trade laws.

Based upon the experiences that I have had in the State of Maine and the industry and workers have had in the State of Maine with our trade laws, and the deficiencies within our present trade procedures, I want to outline some of the recommendations that I would suggest are essential if we are going to improve our trade laws. Many of them are critical; many of them have been suggested by you, Mr. Chairman, in your draft bill, and other recommendations have been made by other Members of Congress who have already submitted their legislation.

But first and foremost, I think it is important to limit Presidential discretion, particularly when it reverses a decision that has been made by the International Trade Commission or other agency. I think that it is particularly important, and I do not think there is any coincidence in the fact that most of the bills that have been introduced in Congress do that either with section 201 or 301.

Second, I do think it is absolutely essential that we tighten up the timeframe in the trade procedures. Again, we have seen that these procedures have gone on for a long period of time. They have

become very expensive; it is an arduous process for an industry, for example, like the Maine potato industry, where there are probably 850 farmers who have had to sustain the cost of going through a very lengthy and costly process.

Finally, I think that there should be more consideration given to the fact that trade relief is temporary and that we should allow our industries to make adjustments in light of import competition. And again, Mr. Chairman, I think that your legislation addresses that with a two-track process.

I think that section 201 does need substantial revision if it is to fulfill its stated purpose of providing temporary relief for import-battered industries. It does not do so now.

As we have seen in the past, only 11 out of 55 section 201 cases since 1974 have led to relief. Presidential discretion to overturn or modify affirmative ITC decisions should be significantly curtailed. In fact, I support the proposal recommended by Senator Danforth and Congressman McEwen which would say that if the President recommends a lesser remedy than the International Trade Commission, it would automatically trigger a 60-day legislative review. And if Congress approves that, fine; but if not, the ITC decision would stand.

I believe the subcommittee's proposal as suggested in your draft, Mr. Chairman, for a two-track relief program is practical and effective. That would have assisted the shoe industry, no doubt. I think that we need to help these industries compete and modernize in the face of import competition. And I think that kind——

Chairman GIBBONS. May I interrupt?

Ms. SNOWE. Yes.

Chairman GIBBONS. I do this because I want you to understand that we are having some problems with that two-track thing. If your staff would keep in touch with ours, we would appreciate it. We are getting protests and we want to work out something. We are working on another draft now, another discussion draft, and that is one of the areas where we have run into problems.

Ms. SNOWE. OK. I would be glad to, Mr. Chairman. Because I do think it could be a workable provision in certain instances such as the shoe industry situation, which was seeking temporary import relief.

And another provision that I think is important, and obviously the Congressman from California, Mr. Thomas, mentioned it, is, of course, creating a fast track for perishable commodities like potatoes. I support this provision in recognition of what Maine's potato industry endured over a 3-year period in filing their antidumping case.

Finally, I fully support the provision in your draft, Mr. Chairman, that provides for a natural resource input subsidy. Again, we have seen that the Canadian Government does provide a subsidy for natural resources below the fair market value. That does constitute, in my opinion, a subsidy and should be treated as such.

In addition, under section 201 I would ask the subcommittee to include labor subsidies such as those provided to Canadian fishermen. Again, I think that our trade laws should be able to make the distinction between such targeted benefits and a legitimate social welfare assistance program.

Finally, under the enforcement in section 301, I think that it has been conspicuously minimal in the past. As we have seen historically, in only 3 of the 52 cases filed under section 301 has the United States taken any measures against the offending country. And I think to remedy this situation, again, decisionmaking authority should be transferred from the President to the U.S. Trade Representative, as has been recommended in a number of the legislative trade reform proposals introduced in Congress.

Finally, Mr. Chairman, I know it has been suggested in your draft to limit the timeframe in which these decisions can be made by not only the U.S. Trade Representative, but also the President as well. I think this is absolutely essential if we are going to develop section 301 into an effective procedure.

Finally, I would say from a broader perspective, I support both the undertaking of the negotiation to improve the GATT and the subcommittee's major directive to our negotiators. I think beyond these directives, however, I would make one other recommendation. I would hope that our negotiators would refrain from the past practices of sacrificing the trade concerns of some industries to achieve trade concessions for other industries. I think picking winners and losers is not an appropriate function of our Government.

In the new GATT round, I would oppose giving the President the authority to reduce tariffs. I am afraid of the impact it is going to have on a number of my industries in the States that do have existing tariffs. I think that the existing tariffs do provide minimal support as well as a benefit to our industries, and I would like to see them retained in light of the problems that these industries have faced in the past.

In addition, our negotiators should also provide for strict enforcement of the GATT, and we should seek to include a greater percentage of world trade within the GATT system. I know that your subcommittee draft, Mr. Chairman, does make those recommendations to our negotiators.

Finally, I would say in conclusion, Mr. Chairman and members of the committee, the desire that I would share with my constituents and the one that I am recommending here today is to create the proverbial level playing field. And right now it has been playing against American industry, and certainly that has cost us dearly in terms of job and economic growth. And I think the challenge to this subcommittee is to bring our trade laws into conformity with the global marketplace of our age and to recognize the realities and the weaknesses within our existing trade procedures, as you obviously do; otherwise, you would not be having these hearings and recommending the legislation that you are, Mr. Chairman.

So I compliment you for your efforts in your undertaking, because I think it will be one of the most significant issues that this Congress will address, and I think must address. I know there is probably no other district in the country that has faced so many import-related problems as my district. So I share your concern and your interest for addressing these problems.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF HON. OLYMPIA J. SNOWE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MAINE

Mr. Chairman, I want to thank you for providing me with this opportunity to testify on one of the most important topics we as Members of Congress have to contend with during the 99th Congress. It is imperative that Congress address our nation's trade problems, and, given the widespread interest and concern shown by Members and industries alike, there is a clear need to act on trade reform now.

My testimony concerns our current trade situation, and the damage that has been inflicted on many of our major U.S. industries. The failure of our trade policies is clearly visible in the State of Maine. I don't think there is a district in the country that has been more devastated than mine by the unfair trading practices of foreign nations, combined with the failure of our policies and policymakers to respond to this challenge.

The experiences of my district clearly illustrate the need for passage of comprehensive trade reform legislation. We must assure that this legislation puts American businesses and the manufacturing and services sectors back in a position where they can compete evenly and fairly in the international marketplace. We can do so by tightening our trade laws and by improving the enforcement of trade policies.

Lack of an evenhanded trade policy has helped produce damage in Maine. Our shoe, lumber, textile, potato, and fishing industries are our most traditional and important industries.

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They are being buried by surging imports and unfair foreign trade practices, including government subsidies. I have seen thousands of workers in my state lose their jobs, and hundreds of firms close their doors, because our trade laws are not tailored in any reasonable way to keep our businesses competitive and our workers on the job.

In the past ten years alone, one-third of the workers in the Maine textile and apparel business lost their jobs when mills were forced to shut their doors. In just the last year, the shoe industry in Maine saw the loss of over 4,000 jobs, and over 30 shoe companies had to shut down. Maine's potato industry is battling against Canadian subsidies and numerous government assistance programs, which provide extensive assistance to their agricultural and other natural resources industries. An intricate system of federal and provincial government assistance programs has given Canadian potato imports a significant price advantage beyond the benefits from the difference in the exchange rate. Potato growers in Maine now receive less than a dollar for a 165 pound barrel of potatoes costing between $9 and $10 to grow. As a result, we may lose up to 150 of our 900 potato farmers this year.

The lumber industry has fared no better. Maine has lost about 25 percent of its mid-sized lumber companies in recent years, and 7,000 workers lost their jobs as a result. The problem, in this case again with Canada, is that through subsidies -- not fair competition -- Canadian lumber has captured 80 percent of the market in the Northeast. Considering 90 percent of the

State of Maine is covered by forest, it is only too obvious to our firms in Maine that a major problem is being ignored.

Finally, consider our fishing industry. Maine fishermen steer their boats into the North Atlantic waters enduring one of the toughest livelihoods I know of. But when they sell their fish in the eastern marketplace, they suffer from significantly depressed prices due to 55 federal and provincial Canadian subsidy programs. These subsidies, identified last month by the International Trade Administration, help Canadian fishermen to supply over 25 percent of U.S. market consumption. New England's fishing industry hopes that the ITC will find material injury in its final ruling later this month.

Of fundamental importance when looking at each one of these situations, is that our Maine companies, workers, and families have seen extensive damage from surging imports, from concerted efforts by foreign countries to seize our markets at our expense, and from an inability to get a meaningful, positive response of any kind from the U.S. government. So, as you consider the reform proposals, you must ask the question which the American people want answered: "How will this proposal better enable our industries to compete fairly with foreign concerns?"

In seeking to provide answers, I believe, Mr, Chairman, that your legislative approach takes aim very appropriately at the major corrections we need to make to turn our trade situation around. The U.S. merchandise trade deficit reached $148 billion

last year. There is growing national consensus that the concept of free trade has become an American myth as other countries have erected trade barriers to U.S. exports, often disguised as domestic regulations, while still targeting their products to our open market.

The footwear industry is a prime example, where a combination of policies of other nations, and neglect by ours, has caused near overturn of a U.S. industry. A 1981 Commerce Department study showed that among 53 trading nations, the U.S. stood virtually alone in its lack of trade barriers to footwear products. Other nations have been quick to take advantage: Taiwan has sky-high tariffs of almost 40 percent on imported shoes; Brazil doesn't allow shoe imports at all; and Japan only lets in 1 million pairs of shoes a year. Meanwhile, our country takes in a million pairs of shoes every twelve hours.

Since orderly marketing agreements were allowed to expire by this government in 1981, imports have soared, and have increased their market share by over twenty-five percent each year. As a result, we now have 80 percent import penetration.

For several years, the domestic footwear industry played by the rules religiously in pursuit of trade relief. A trade petition was pursued under Section 201 of the Trade Act. The footwear industry, despite years of frustration with our trade relief laws, saw no choice but to persevere.

Last September, the President rejected the temporary import quota system recommended to him by the International Trade Commission. This denial came as a surpise given the firm position of support for relief from the ITC, and the absolutely crippling effect of the import surges for the past several years. Having worked through the established administrative relief process, and having proved their case unequivocally, the decision to turn against their efforts was a major disappointment. Clearly, this industry deserved an opportunity to modernize with a temporary system of quotas on imports.

The footwear industry has now lived a complete nightmare because of the problems built into Section 201. Since 1970, six Section 201 cases have been initiated or filed by this industry. At various times during these years of frustration the process broke down because the ITC Commissioners were split, because the President didn't want to abide by the recommendations of the ITC, or because relief was denied due to the narrow definition which now is required for an injury finding.

But the footwear industry is not alone in its trade law woes. Maine's potato industry has had enormous difficulties in pursuing its anti-dumping case against round white potatoes imported from eastern Canada. This case is very familiar to small industries across this country, who could sympathize with the trade problems Maine's potato industry was having, and with the difficulty the

industry had in determining how to file a case, what kind of a case to pursue, and the costs imposed in pursuing trade relief.

Maine's potato industry has suffered for years from subsidized Canadian imported potatoes. In April, 1982, the ITC began an investigation of this situation. Following two favorable subsidy rulings by the Department of Commerce in 1983, a 36% duty was established. However, the ITC adversely ruled on the injury determination in December, 1983. Maine's potato industry appealed this decision to the International Court of Trade, which finally turned down Maine's appeal in August, 1985.

The proceedings have been wrenching for this industry. The expense for a small industry like this one, with only about 850 families involved, is enormous. Time delays, in this case over three full years, have resulted in annual losses in market share for Maine growers. Finally, the current process simply does not work for agriculture industries, where trade situations change quickly, and where relief is needed just as quickly. Many agricultural industries can't even give serious consideration to pursuing a trade case because it usually takes well over a year to get results. Highly perishable products need a timely determination.

When I turn to specific recommendations, I will elaborate on a fast track provision for perishable products. I only want to reiterate my frustrations with the failure of our current system to give Maine's potato industry any kind of chance against heavily

subsidized Canadian imported potatoes. I know, Mr. Chairman, you have heard from me on this issue several times before. Should Maine's potato industry wish to pursue trade relief again, I believe a faster, clearer relief process is imperative to give them a fighting chance.

The fishing industry has pursued a countervail case, and has pursued this case for several years, starting with fact-finding hearings back in 1982. The evidence is quite clear that Canada's federal and provincial government assistance programs are providing Canadian fishermen with an unfair market advantage. While the Department of Commerce has acknowledged that the Canadians subsidize their fishermen through 55 different programs, they did not give consideration to a seasonal unemployment compensation program they provide for self-employed fishermen, which would add another $20 million to the total government subsidy. Commerce Secretary Baldridge, in a letter I received last week, indicated to me that a labor-related subsidy of this kind was not "preferential when compared to the terms for unemployment insurance for most other workers in Canada."

Since the insurance program was not considered, Commerce found a subsidy level of 5.82 percent on Canadian groundfish imports. If the program had been considered, that level could have been as many as 10 percentage points higher, making an injury finding in a few weeks much more likely. I understand that the Subcommittee last week heard from a representative of New England's fishing industry, Lucy Sloan, about why we see this as a

problem in the countervail. As the countervail law reads now, labor-related subsidies can't be considered. This is a clear case to me, and I believe a change on the countervail law is necessary.

As one more example of why our trade laws need strengthening, let me describe the situation faced by the lumber and wood products industries. As the Chairman well knows, the U.S. lumber industry filed a countervailing duty petition against Canadian lumber imports in 1982. The lumber industry claimed, and still does, that the imports are subsidized since Canadian provincial and federal governments own 95 percent of the timber, with this lumber then sold to Canadian firms at about 10 percent of the similar cost in the U.S. The ITC found that these imports were doing serious harm to U.S. lumber firms and have enabled Canada to capture 80 percent of the northeastern market. However, the Department of Commerce ruled that this undervalued timber from Canada was not technically subject to a countervailing duty because it was also made available by the Canadian government to several other industries.

That indicates to me that a weak technicality is letting Canada off the hook. As things stand, our countervailing duty laws won't do the job, and that has left the U.S. lumber industry in a very difficult situation. The trade laws can't do anything for them under the present circumstances.

Maine's industries -- shoe, potato, lumber, and fishing, illustrate several trade problems with our trade laws and policies

that need correcting. First, there should be less discretion available to the President to reverse the rulings of the International Trade Commission and other agencies which make trade determinations. Second, there should be more consideration given to the fact that trade relief is temporary and that an industry should be given more opportunities to modernize to face the international competition. Third, there needs to be a tighter time schedule built into all of the major trade laws and avenues taken by industries in pursuit of trade relief. Finally, our trade laws need to be more practical for the problems our industries face. We see too many loopholes that prevent industries, such as ours in Maine, from obtaining the trade relief they deserve from this government.

Mr. Chairman, I know you recognize that the current laws don't correct the existing problems, and where we do have laws, they aren't enforced or aren't pursued. Our industries are now up against a wall of trouble with foreign subsidies, export barriers, and the lack of enforcement of both international and bilateral agreements. Our failure to rectify these problems during the months ahead will have long-term negative repercussions for domestic employment, and for the American economy as a whole.

The trade problems faced by Maine industries point out the need for several specific reforms:

Section 201. This section, under which import-battered industries seek temporary relief, has been rendered virtually meaningless.

Only 11 out of 55 cases since 1974 have led to favorable determinations. First, Presidential discretion must be strictly curtailed. Under current law if the ITC makes an affirmative injury determination, the President is required to provide import relief unless he determines that it is not in the national economic interest. That amounts to excessive discretion. The determination of the ITC on the footwear case, for example, was ignored by the President, which shocked many of us in Congress.

For this reason, I support the Subcommittee's approach in favor of a two-track import relief system, with an industry adjustment plan as an essential component of trade relief. In combination with this, however, the Subcommittee's bill leaves the USTR with the final determination as opposed to the President. While this represents an improvement, I believe a better solution would be to limit any Presidential discretion rather than shifting the same discretion to another federal official.

I support the approach put forward by Senator Heinz and Congressman McEwen, in which the President's discretion in such cases would be limited to relief measures recommended by the ITC or similar forms of relief. However, Congress would have sixty legislative days to act in support of a lesser remedy -- including no remedy at all. Thus, this provision allows enough opportunity for the President to make his case for lesser relief if necessary, but the burden of proof would clearly be on the President. That makes this provision workable. Industries can expect a reasonable

opportunity for a favorable outcome if they help put together the adjustment plan designed to help them become more competitive.

Because industries such as footwear are still suffering from heavy imports, I encourage you to include in your bill an expedited section 201 procedure. This will cover industries like the footwear industry that filed relief petitions and received favorable injury determinations from the ITC, but were then denied by the President. The ITC would perform an expedited review of the case to verify that the injury still exists, and then the President would review the case a second time. With other adjustments to Section 201 and an expanded list of remedies, I feel a favorable determination is likely for footwear if given another opportunity by this legislation.

Third, I support Mr. Guarini's bill, the Trade Law Modernization Act, which expands the "threat of injury" standard to allow imports to be a "cause" of injury, and not a "substantial cause". This change seems reasonable because there are other factors which come into play, such as an economic recession, which should not serve to negate an industry's claim for relief. This change would also be agreeable with GATT, which requires that imports "cause or threaten serious injury," but the degree of causation is not specified.

Agricultural Fast-Track. As I have already indicated, agricultural industries need a fast-track mechanism to seek temporary relief from imports. As my colleague, Mr. Thomas, knows

all too well, producers of perishable products need a responsive trade mechanism. I recognize and appreciate that the Chairman supports this concept and has included language in the Subcommittee draft bill. This provides an emergency mechanism to give the producing industries of potatoes and other perishables a proper trade response.

Countervail and Anti-dumping Cases. On natural resources, I fully support the Chairman's initiative to include natural resource input subsidies as evidence for countervail purposes. The lumber industry's efforts to gain import relief from subsidized Canadian wood, points out the problem very well. Natural resources sold by foreign governments to their companies at below-market costs should constitute a subsidy, and should be treated as such. The modification the Chairman proposes would define the removal right subsidy in the case of timber, for example, as the difference between the price of U.S. timber rights and the Canadian timber rights. For lumber, if this change were in place today, I think you would see much greater progress in our current negotiations with the Canadian government.

I would also support a modification to amend the definition of a subsidy under our countervailing duty laws to include so-called "labor subsidies" where a government provides benefits to an industry, as Canada does for its fishing industry, under the guise of an unemployment insurance program or other social welfare program. This addition also carefully distinguishes between targeted benefits and legitimate social welfare assistance. I

understand that your staff has received information on this proposal from our fishing industry's North Atlantic Fisheries Task Force. I would be pleased to be of assistance if you need more information on this issue.

Section 301. Section 301 must be used much more widely by the United States government and, specifically the Administration, to enforce U.S. trade agreements, and as a response to unfair trading practices. It is important to remember that in only 3 out of 52 cases initiated under Section 301 has the U.S. taken any measures against the offending countries. That is a dismal record which indicates a lack of willingness to compel our foreign trading partners to live up to their trade agreements with us.

I would support the transfer of decision-making authority on section 301 determinations from the President to the U.S. Trade Representative, but such a modification should serve to eliminate lengthy delays in section 301 determinations. While the U.S. Trade Representative has time limitations, the President does not, and that has left a number of cases in limbo for many year as at a time. The Subcommittee draft's provision for a 9-month time period in which the USTR must make a recommendation to the President would correct this delay problem. I believe the time limit on Presidential consideration is important as well.

GATT. I support the undertaking of a new round of multilateral negotiations by the Administration, and support as well the major directives suggested in your draft bill on these

negotiations. However, it must be made clear to our GATT negotiators that they must not follow the past practices of sacrificing trade concerns of some industries to achieve trade concessions from foreign nations for other industries.

For example, negotiators at the 1979 Tokyo Round effectively shortchanged Maine's potato industry by phasing out quotas and reducing tariffs in order to obtain duty reductions with Canada for our large fruit and vegetable industries.

I oppose giving the President new authority to reduce tariffs as part of a new GATT round. This shoe industry already suffers from 80 percent-and-climbing import penetration. The shoe industry is fighting for its life, and a further step to lower tariffs at this time could be the final blow. I am also concerned about some trade off happening so fast this industry won't know what hit them until it's too late.

In our approach to a new multilateral round, explicit objectives must be set out to put teeth back into GATT enforcement and its applicability. GATT currently affects only 10 percent of world trade. I am pleased that the Subcommittee has included agriculture goods on its list of items which should be applicable to GATT review. GATT requirements for subsidies must be toughened, and coverage should be expanded, as indicated by the Subcommittee's legislation to include trade in services, investment, and intellectual property.

In general, international trade rules must be strengthened to contain the move by nations all over the world to pursue domestic policies that promote their industries at the expense of other countries. The need for an international order to trade has been widely accepted, and no other country accepts this need more readily than the United States. I support the Subcommittee's provision on the authorization of a new GATT round which sets out these very clear and specific objectives.

Mr. Chairman, I want to thank you again for giving me this opportunity today to share with you my thoughts on trade reform legislation. I commend your efforts and your willingness to address an area of such deep concern to our industries in the United States, despite the complexity of trade reform and our trade laws, and the range of opinions about each and every provision or modifictiaon suggested for this legislation.

It is clear, however, that there is a siginificant level of agreement that our laws need strengthening at home and at the international level through the GATT. The United States needs to better enforce its laws and its trade obligations in order to expand trade abroad and bolster our domestic industries. If the federal government can meet this challenge, we will see the difference immediately in terms of an improved economy, more jobs, and an improved outlook for import-sensitive industries such as those in Maine. Our thousands of workers in Maine in the shoe, potato, fishing, and timber industries only ask that they be given the right to compete fairly with their foreign competition. They appreciate your trade reform efforts.

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April 16, 1986

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APR 18 [illegible]

Ways and Means
Subcommittee on Trade

The Honorable Sam Gibbons
Chairman
Subcommittee on Trade
Committee on Ways and Means
1102 Longworth Building
Washington, D.C. 20515

Ways and Means
Subcommittee on Trade

Dear Sam:

I wish to thank you again for allowing me to testify before your subcommittee this morning on trade reform.

I am enclosing a list of the government assistance programs made available to Canadian potato producers in New Brunswick and Prince Edward Island. This list was compiled by the Maine Potato Commission, and complements a report prepared by the Maine Department of Agriculture and the New Brunswick and Canadian Departments of Agriculture in 1982. I have asked the Maine Potato Commission to provide me with an additional copy of this original report which provides details on each one of the programs that are listed on this sheet. I will certainly send you a copy of this report as soon as I receive it.

I hope you and your staff will find this information to be useful in the examination of subsidies, and I appreciate your continued concern about the trade problems our industries in Maine have encountered.

With best regards,

Sincerely,

Olympia

OLYMPIA J. SNOWE
Member of Congress
2nd District, Maine

OJS:as

IN MAINE, CALL TOLL-FREE
1-800-432-1598

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NEW BRUNSWICK AND PRINCE EDWARD ISLAND

ASSISTANCE PROGRAM TITLE	APPROXIMATE AMOUNT OF ANNUAL SUBSIDY	ESTIMATED SUBSIDY VALUE PER ACRE
Ag Stabilization Act	$4,060,000 per year average	$ 35.61
Storage Construction	Estimated $5,000,000 this year	43.86
Inspection Subsidy	Estimated 10¢ per 100#	20.00
Advance Payment Storage Crops	$174,800 average interest subsidy	1.53
Crop Insurance	1,291,000-50% annual premiums	11.32
Farm Development Grants, NB	$340,000 average per year grants	
New Farmer Program PEI	176,000 average per year grants	9.61
Family Farm Development Prog.PEI	580,000 average per year grants	
Ag Limestone Asst.	$324,800 average per year grants	2.85
Farm Adjustment Act	Estimated Interest Subsidy	.79
Interest Subsidies NB	1981-82 $2,313,500	20.29
Contracts Program NB	Disease Clean up $80,000 (1981-82)	.70
Tech Services Program NB	Annual Average $123,500	1.08
Bon Accord Seed Farm	Annual Average $304,000	2.67
Fox Island Seed Farm	Construction Subsidy 300,000	2.63
Soil Testing	Estimated $114,000	1.00
Seed Incentive Program		
Cull Burial Program	Estimated $490,000 annually	4.30
Potato Disinfection Program		
Potatoes Canada for Export Sales	$278,880 annual grant	2.45
Maritime Freight Rate Act	50% Freight Subsidy to select area	?
Farm Credit Corp. Loans	?	?
Family Farm Improvement ProgramNB	$4,000 for 1981-82	.04
Post Harvest Testing	5 year average $45,700	.40
Land Development Corp. PEI	?	?
PEI Lending Authority	Complete Credit Package?	?
Export Promotion	Reimbursement for Trade Mission Travel	?
	TOTAL	$161.13

114,000 Acres x $161.13 per acre = $18,368,820.00

Chairman GIBBONS. I am very concerned about the problems that the people in your area face being along that fine border between the United States and Canada and having the problems of our mismatched currencies facing them as well as different, really philosophically different agricultural programs.

I do not know much about potatoes except that I like them. We grow a few in Florida up around the Hastings area, but that is 150 miles from my home. So I really do not know much about them.

Is the potato industry in the United States in any way subsidized by the Government?

Ms. SNOWE. No. My potato industry, in fact, I met with my potato farmers yesterday, do not receive any form of subsidy other than getting assistance of the Farmers Home Administration for various things, you know, operating loans and that kind of thing. But that is the extent of it.

In fact, we have documentation that would indicate substantial subsidy programs provided by the provinces of New Brunswick and Prince Edward Island. There are more than 27 different subsidy programs. So we have competing problems because we are not only dealing with the provincial subsidies, but we are also competing with the Federal subsidies. But there is not any price support program for potatoes or anything of that kind.

Chairman GIBBONS. Well, your agricultural base is very similar to mine in Florida. Peppers and beans and strawberries and things of that sort do not receive any kind of support. And they really have a murderous road to go to compete in the world marketplace.

One of the things this committee is always trying to do is collect illustrations of what other people are doing. If you have access, could you provide for us a summary of those subsidies that those provinces have. I realize that Canada is not organized similar to the way the United States is, that their provinces have far deeper pockets and far greater powers than do our States. And we would be interested in those, if you could provide a list for us.

Ms. SNOWE. Yes; I have a list. In fact, Mr. Chairman, I would be glad to submit it to the committee. And you are right, they are structured differently.

The potato industry, in fact, is facing another situation because of overproduction this year; although we have limited acreage, we have fallen below the 100,000 acreage mark. Nevertheless, three of the provinces in Canada have instituted $7 to $10 million diversion programs.

So there is no question they go the extra mile for their industries. They have in the past, and I suspect they will continue in the future. They want to maintain their export capabilities.

I do have a list of those subsidies.

Chairman GIBBONS. If you would provide that for the staff here, I will ask that it be placed in the record at the end of your testimony. It would help us. We need that kind of information.

Ms. SNOWE. The fact is they have translated it to, especially in the province of New Brunswick, approximately $161 an acre in terms of subsidy. And so it is very substantial.

Chairman GIBBONS. Thank you very much.

Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

I would like to thank our colleague for her testimony, and I regret that our other two colleagues had to leave. But to follow up on your conversation with the chairman, how do you feel, Olympia, about the possibility of negotiating a bilateral treaty with Canada?

It seems to me that it would give us an opportunity that we have not had in the past of really getting to the root of some of these problems.

Ms. SNOWE. I am very concerned about negotiating the free trade zone with Canada, and I have expressed my concern to Mr. Yeutter. Because unless we get agreement with Canada to eliminate the subsidy programs for their particular industries, there is no way we could have a free trade zone and survive. Given the current climate between the exchange rate that we are having to endure and, in addition to that, the subsidy programs, there is no way we could compete in the free trade zone environment if the Canadian Government continues to provide the variety of subsidies that they currently do.

I have expressed that concern and I know, frankly, in the Senate Finance Committee, this concern was expressed again last week during the course of hearings on the free trade zone. There is strong opposition to it at this point for simply that reason. If we cannot get that kind of an agreement, then I could not recommend it. Ultimately, it would work, but we would have to get some agreement from Canada in that regard.

Chairman GIBBONS. Mr. Schulze, will you yield?

Mr. SCHULZE. Yes.

Chairman GIBBONS. I want to assure you to the extent that I can that we do not intend to waive any of our antisubsidy laws in our negotiations with Canada. And it would be foolish, I think, for negotiations to proceed with Canada based upon the expectation that our basic, what I would call, fair market, level playing field, fair market pricing system would be changed. As far as I am concerned, that is outside the scope of negotiations.

Mr. SCHULZE. I am inclined to agree with the chairman and that would have been my response, but it seems to me if we go on the way we are, you are going to be injured more than if we have an opportunity to sit down and negotiate and bring these things into light.

Let me also say that if we cannot negotiate a bilateral treaty with Canada, we better give up and build some walls. Because we are not going to be able to deal with anybody in the world, and we have much more in common with the Canadians than we do with the Europeans or the Far East or anyplace else. And if we cannot reach an agreement with them, then it is going to be an entirely different world trading order and trading structure, and we may not like what develops from it.

Ms. SNOWE. No; I understand what the gentleman is saying, and I share those concerns because obviously Canada is very close to the State of Maine. There is certainly a commonality of interest in many respects, and many people in Maine have strong ties, family and otherwise, to the Canadians.

So it obviously is in our interest to perpetuate our friendship and good relations with that country. But my concern stems from my perspective as well as my experience with the administration in

dealing with the Canadians and negotiating on some of the issues. And as the chairman knows, as far as the timber industry is concerned, we have not been successful heretofore with the Canadians in trying to get them to retreat on some of their subsidies or unfair trading practices, as I view them.

And if we lead to a free trade zone, those very——

Mr. SCHULZE. You conclude that they are entirely wrong and we are entirely right. And in all negotiations if we look at their method of stumpage, perhaps we should be emulating them. I am not saying that they are entirely right, but we might be wrong. Maybe there are some things we should change and that they should change and we could reach an accommodation.

I do not know that we should go at negotiations by saying you have got to change your system and make it like ours. Maybe we can learn something from the other side.

Would your timber producers rather see stumpage charges like theirs rather than ours?

Ms. SNOWE. We are losing a lot of them, I might say.

Mr. SCHULZE. But would they not rather see that type of assistance?

Ms. SNOWE. You mean to subsidize the stumpage rates? No, I do not think they are looking for subsidies. They are looking for——

Mr. SCHULZE. Whether it is subsidized or not is really up to question. It is whether their method of stumpage—all the timber people I talk to say, gosh, yes, we would like to have that. But somewhere in between, it seems to me, there is an area of compromise that we can reach a rational agreement.

Ms. SNOWE. I guess as far as the negotiations regarding the free trade zone, I certainly would have concerns because we just have not had any assurance from the administration that we are going to be better off in certain industries.

Mr. SCHULZE. I understand your concern with the administration because their negotiations have been a business. But it is going to be us to look over their shoulder and make sure.

Now, from your testimony, I would also say that you would rather deal with GATT. Do I read that correctly?

Ms. SNOWE. That is not preferred, but I think that that is one option, bilateral and multilateral. I think we have to use a host of arrangements.

Mr. SCHULZE. Do you think that multilateral has been to our advantage over bilateral?

Ms. SNOWE. No. I did not say that it was advantageous. I think it is reality and something that we have to deal with. Certainly, some of my industries have lost out in earlier negotiations because of reduced tariffs or elimination of quotas. The potato industry is a good example of that.

Mr. SCHULZE. But in your testimony you do say we should strengthen GATT.

Ms. SNOWE. In enforcement, that is exactly right.

Mr. SCHULZE. But on both sides? We have got to be careful of that. You see, I think GATT is becoming less and less a factor in international trade; less than 10 percent of international trade now comes under GATT. And so I view it as relatively worthless and say it is up to you to prove to me that they are not worthless. I

would like to see a successful round, but if it does not, we have to go the bilateral route. We have to be prepared to go another route. It seems to me that if we cannot go that way with Canada, then it is up to you and me and the chairman and others to look over the shoulders of the negotiators. We have that privilege.

Ms. SNOWE. I guess my view is probably similar to those in the Senate Finance Committee where this proposal on free trade negotiations is having problems because of the frustration that many of us face right now.

Mr. SCHULZE. So what you are saying is that we need preconditions to those negotiations, and I cannot——

Ms. SNOWE. Strong assurances.

Mr. SCHULZE. Well, you see, that is the same thing on the other side. They are saying we want preconditions because we are concerned about X, Y, and Z. I do not think there should be any preconditions. If we cannot negotiate a good treaty, you will have the opportunity to undercut it when the time comes.

Ms. SNOWE. Well, I am afraid that if we get far down that road we may never be able to turn back even if it is not in the interest of some of our industries. And certainly my Maine potato industry would——

Mr. SCHULZE. But you would rather see it continue on the same track is what you are saying, and I——

Ms. SNOWE. No. We have not been able to negotiate that on the timber issue.

Mr. SCHULZE. OK. You are right. And so we should not try a new approach. I think you are going down the path of destruction, and you are saying, you know, we are going to go the same old baloney route. We are not getting any action. We are not getting anything. It is our only opportunity to force something.

Well, anyhow, I appreciate your views. I would think that you and your people stand to gain a lot more by overall negotiations with Canada than we do by staying with the status quo or trying to negotiate these problems through GATT. I think you are going to get a lot less satisfaction that way. But I appreciate your views.

Ms. SNOWE. I appreciate your comments as well. Again, I understand what you are saying, but it has been a long-term problem for my industries in the State of Maine, and my district in particular. We have had difficulty even getting inspections at the border of Canadian potatoes. We have found many of the loads are below grade, but it took a long period of time even to get those inspections in place. We had urged the administration to close ports of entry because of the number of Canadian potatoes coming across the border below grade, but the administration just recently made the decision not to do that because of fear of offending the Canadians.

So you have to commend and compliment the Canadians because they go the extra mile for their industries. There is absolutely no question in my mind. And I know if you ask anybody in Maine's potato industry right now if the U.S. Government has done anything for them, they would absolutely say no. Because they have not and it is the truth.

They are seeking legitimate trade relief, and this Government has not responded in kind in any way, or in any form.

Mr. SCHULZE. Have the potato growers filed action?

Ms. SNOWE. Yes, they did. The filed an antidumping petition and were rejected by the ITC. It was a very interesting decision because they used different data than the Department of Commerce in making their decision. They compared different size and quality of potatoes as well. So it was an unusual decision, in my opinion and the opinion of others, even though the Department of Commerce had recommended a 36-percent duty as a result of the margin of subsidy the Canadians had been giving their potato farmer.

Mr. SCHULZE. Thank you.

Ms. SNOWE. Thank you.

Chairman GIBBONS. We have been trying to work out some administrative details here for the rest of the witnesses this morning. It looks like we are going to have to recess here at about 12:30 and come back again at 2.

Now, I am not trying to finish with you, Olympia. I just want to let everybody know what our schedule is. We have got so many votes on the floor today and so many other things going on, but we want to let everybody have some planning room so they can figure out when they are going to get lunch and when they can make plane connections and things of that sort.

Mr. Pease, would you like to inquire of Ms. Snowe?

Mr. PEASE. Mr. Chairman, I do not want to inquire. I just want to commend our colleague on her testimony. I have had a chance to read it thoroughly, and I must say it shows an impressive grasp of the trade laws as well as the problems which beset your own industries. Your suggestions for us are good, sound ones, and I think your testimony is going to be very helpful to us as we mark up next week.

Ms. SNOWE. I appreciate the gentleman's comments. Thank you.

Mr. PEASE. Yes.

Chairman GIBBONS. Thank you, Ms. Snowe.

Ms. SNOWE. Thank you, Mr. Chairman.

Chairman GIBBONS. Let me say before you leave that I am an unapologetic foe of injurious subsidies. If any subsidy or group of subsidies that we put together, no matter how cleverly, begin to injure our products, then I am against them. And I will fight like a tiger in this committee and anyplace else to oppose those. Anybody that goes into negotiation representing the United States hoping to negotiate any of those laws away is going to be awful mistaken. I do not think that I could ever accept any changes in those areas, and I do not think the American Congress would accept them.

I say that to you so that it will be fair warning to all of our negotiators.

Ms. SNOWE. I thank the gentleman, and I know you are interested in and you are aware of the problems that we have been facing since we have had a number of conversations over time.

Chairman GIBBONS. Free trade is not subsidized trade, and I stand for free trade. I will not put up with any subsidies.

Ms. SNOWE. I appreciate that. Thank you, Mr. Chairman.

Chairman GIBBONS. Our next witness is Lynn Williams of the United Steelworkers of America.

STATEMENT OF LYNN WILLIAMS, PRESIDENT, UNITED STEELWORKERS OF AMERICA, ACCOMPANIED BY JACK SHEEHAN, LEGISLATIVE DIRECTOR

Mr. WILLIAMS. Mr. Chairman and members of the committee, we very much appreciate this opportunity, both Jack and me, to appear before the committee and make our presentation.

It is evident that a political consensus has been formed to dictate a change in trade policy. This committee will shortly define the details of those changes which, given the widespread discontent with the present trade policy, will require substantial revision. The United States can no longer sustain mega trade deficits. Our workers will no longer accept continued erosion of their jobs, their communities and their industries. Actually the labor movement is expecting that the legislative action will not only halt future injury, but recapture some of the industrial base already lost.

There is, without a doubt, a fear of future loss and hopefully the committee will arrest that threat. But there is also the pain of present injury. Laid-off workers displaced from industrial jobs, especially in the manufacturing sector, are expecting a reform in our trade laws that will result in a recall to work. As you well know, the opinion polls have long indicated strong public support for legislative action to reverse the tide of import pressures.

While the political indexes all point to a policy consensus for action, as the president of a major industrial union, I must say that for some time now, the economic indexes on international trade have demonstrated that the system is breaking down. According to the Commerce Department:

> United States performance in manufacturers trade has been deteriorating since 1981. The decline was broadly based. Trade balances worsened in 15 of the 20 major classes of manufactures. Performance fell even in capital and high-technology goods where the United States has traditionally been strong.

Throughout this period, there has been a hesitancy in Congress and especially the administration to go beyond dealing with only a narrow range of unfair trade practices. What we are witnessing is not just the need for a refinement of unfair trade provisions, but an overall revision of U.S. trade policy. At the same time, individual industrial "sectoral sacrifice" has continued to the point where the total trade deficit has become overwhelming. Major U.S. industrial sectors have succumbed to mounting trade pressures and deficits. For nearly 15 years, those of us who represent industrial workers have sounded an alarm, but our calls went unheeded.

Industry-specific legislative approaches were ignored so long as the overall trade balance was somewhat stable. Thus, for instance, steel quota proposals did not receive any congressional attention until after the President announced the National Steel Trade Program at which time Congress enacted the Steel Import Stabilization Act. My point, Mr. Chairman, is that sector after sector has been undergoing dramatic import penetration, enough to warrant at least broad-based changes in trade policy. In some cases, even industry-specific measures should be entertained. But it was not until triple digit trade deficits did a political consensus come together and assert itself. But in the meanwhile, plants have shut down and workers laid off. Even the benefits of the recent recovery

have been denied to American workers as overseas firms seized a disproportionate share of the increased demand. In the steel industry alone, over 200,000 steelworkers have lost their jobs.

These sectoral sacrifices have particularly impacted the United Steelworkers of America. Ninety-two percent of our membership is in the goods-producing industries. Since 1970, overall employment in these industries declined from 33.3 percent of the work force to 26.5 percent in 1984. Between 1980 and 1984, the reduction in the share of jobs in the goods-producing industries fell about 7 percent. During this period, Steelworkers membership, which is predominantly in the manufacturing sector, dropped by 34.5 percent.

The loss of jobs in some of the individual industry groupings represented by the Steelworkers demonstrates why there has been such an outcry on our part. Between the fourth quarter of 1980 and the fourth quarter of 1984, our members in the following industries dropped accordingly: steel, 45.1 percent; copper, 53.3 percent; aluminum, 32.5 percent; iron ore, 48.9 percent; copper ore, 54 percent; ferroalloy ores, 29.8 percent; fabricated metal products, 31.8 percent; cutlery-hand tools, 25.8 percent; valves and fittings, 48.4 percent; machinery, 39 percent; internal combusion engines, 40.5 percent; oil field equipment, 67.4 percent; pumps and compressors, 36.2 percent.

You will note that many of these industrial sectors are subject to heavy import penetration. In the steel industry, for example, imports took over 25 percent of the U.S. market in 1985.

Furthermore, from a steel perspective, since many of our fabricating industries are large steel consumers, we have experienced very large increases in indirect steel imports which, combined with direct steel imports, have left jobs in the industry at an all-time low—182,000 steelworkers in 1985 compared to 370,000 in 1975.

Mr. Philip Ola, Steel Service Center Institute, in recent testimony before this committee, noted that efforts are needed to ensure the long-term health of the domestic steel industry. However, foreign producers faced with this situation have moved "downstream" to avoid restraints on their products. The problem of indirect steel imports has been growing in significance in the last few years. A recent study by the Department of Commerce, "Trade Ripples Across U.S. Industries," indicates:

> The implication is clear: the problems of the United States primary iron and steel industry cannot be resolved simply by imposing restrictions on steel imports, when for each steelworker who was displaced by direct steel imports there were two additional steelworkers displaced in 1984 as a result of the indirect effects of foreign steel embodied in other imports.

According to the Locker report, "Confronting the Crisis in Steel," prepared for the Steelworkers and referred to by the Steel Service Center testimony:

> * * * the steel contained in imports of products such as automobiles and machinery increased by 136 percent between 1977 and 1985. Over the same years, the steel content of our exports declined by 17 percent. As a result, the U.S. went from having a positive trade balance of 3.1 million tons of indirect trade in steel-containing products in 1977, to an indirect steel trade deficit of 6.3 million tons in 1985. In other words, we had an unfavorable shift of 9.4 million tons of steel during these years. These changes were in large part due to increases in downstream product imports, from 5.8 million tons in 1977 to 13.7 million tons in 1985. These are tons that could have been supplied by American producers and steel service centers.

Although there are other factors involved, these enormous losses in steel and other basic industries should reinforce the rationale, and indeed, the justification, for an aggressive and effective legislative change in U.S. trade policy. We must overcome the passive attitude in the White House toward the trade crisis. Even though the administration has recently undertaken certain limited measures to confront the situation, there is an absolute need for the Congress to stimulate further progress and to assure continued movement in correcting the trade deficit. And perhaps most importantly, the Congress must provide appropriate and proportional relief to specific sectors which are under intense import pressure.

This committee is well aware of the import crisis facing the steel industry. We have been here before. Steel import levels are reacting in a similar way as the climb in overall unemployment figures After each recession and the initiation of a recovery, the subsequent unemployment plateau is higher than before the recession began. Steel import penetration, likewise, never seems to recede. As a matter of fact, the President's voluntary restraint plan, announced in 1984, proposed 20.2-percent penetration as the basis for an acceptable foreign share of our market. It was, at that time, the highest level ever reached except for 1983. Since then, however, the import levels have remained above even the President's target.

Without question we need a dramatic change in our trade relationships. As a nation, we can no longer sustain unlimited, unregulated, and unrestrained import penetration. Enough is enough. What we need now is a process of policy adjustment. Not the adjustment of unemployed workers to new jobs, but the adjustment of trade flows to new economic realities. Our economy cannot continue to absorb the large trade deficits. Our workers cannot continue to be deprived of their livelihood. Younger workers cannot continue to be confronted with the lost job opportunities in the manufacturing industries which have, in the past, provided the means to middle-income standards of living. We cannot, Mr. Chairman, accept the proposition that trade, instead of being a vehicle for growth, is rather an instrument for reducing wages and lowering the living standards of American workers.

I wish to add my support to those trade proposals advanced by my colleagues in the labor movement who have so far testified before you. There are some specifics, however, which I might highlight:

STEEL IMPORTS

Eighty percent of steel trade is now under a system of voluntary export restraints initiated for the most part because steel has been unfairly traded due to uncompetitive prices created by foreign subsidies and dumping. It was the President's intention that these arrangements would—based upon fair market forces—produce an import penetration of 20.2 percent. However, it is now a firm conclusion that such a level cannot be achieved. The lowest level of imports that can be expected is not less than 23.4 percent. According to the Congressional Research Service, this "missed opportunity" has resulted in the continued loss of 7,800 steelworker jobs,

18,200 steel-related jobs, 2.8 million tons of production, $1.1 billion of capital formation.

Yet the unrealized import level of 20.2 percent is essential if the steel industry is to accumulate the necessary capital for its restructuring to remain a world class industry. Furthermore, those voluntary restraint arrangements will provide the industry and its workers with a period of import stability, whereby it can recover from the long-term injury due to protracted unfair trade practices. Rehiring of workers and reinvestment in productive facilities can revitalize the industry and our steel communities. The Trade and Tariff Act of 1984 encouraged this restoration by conditioning enforcement of the VRA's upon the industry's commitment to modernization.

Basically, while we have high praise for the U.S. Trade Representative's negotiators, the arrangements cannot reach the target because: The agreements are not global. Some major steel exporting countries remain outside the system; some of the agreement countries were allocated too large a share of the U.S. steel market; and current Customs practice regarding "substantial transformation of" allows transshipment of steel from a VRA country to a non-VRA country to be transformed into a different steel mill item and not be charged to the country of origin upon entry.

USWA seeks a redress of these problems because we are most interested in the success of the VRA program. To that extent, we have recommended: Codification of the President's program at a 20.2-percent level through renegotiations of the current VRA's and extension to all steel exporting countries. The Trade and Tariff Act of 1984 affirmed Congress' intention to seek additional legislative action if the administration's program did not produce satisfactory results. The USWA is convinced that imports over 20.2 percent are destined to vitiate the steel trade policy announced by the President in September 1984.

Anticircumvention measures where by steel melted and poured in one country will remain charged to the quota arrangement of that country despite any substantial transformation into another steel mill product in a second country prior to entry into the United States. Customs officials have been very sensitive to this problem. But we suggest that Congress should provide the Customs Service with additional legislative support so as to plug any potential loopholes in enforcement.

DEFICIT REDUCTION

As I mentioned previously, the steel industry has been afflicted by both direct and indirect steel imports. We are hurt by reduced demand from steel consuming firms, which have been seriously impacted by fabricated steel imports. Without a recapture of that market, the direct steel restraints cannot be fully effective.

We are convinced that the Trade Emergency and Export Promotion Act (H.R. 3035) presents the possibility of a more rapid trade deficit reduction pending the implementation of the more long-range provisions in the staff draft.

It is necessary that there be a formula whereby our trading partners would be required to maintain a more stable trade relation-

ship. We can no longer tolerate the wide imbalances of the last few years. A certain degree of mandated reciprocity, either through greater export growth or moderation of imports, will have favorable impact on the aggregate trade deficit. Additionally, such a balance will also accrue to the benefit of our manufacturing industries, many of which are steel-consuming ones.

ESCAPE CLAUSE RELIEF—SECTION 201

USWA is particularly pleased to see an expansion of the safeguard relief section to include an optional track whereby the petitioner might seek special consideration in obtaining relief if the industry engaged in a multilateral process for the purpose of submitting a modernization or adjustment plan. USWA has previously endorsed the notion of conditionality; that is, the granting of trade relief in certain circumstances should be conditioned upon reinvestment in the industry. The current Trade and Tariff Act of 1984 mandates such a commitment as a condition for enforcement of the VRA's. However, that act does not require the development of a plan. Relative to the staff draft concerning industry adjustment plans, let me make a few brief comments:

The composition of the industry adjustment board, out of which the plan would evolve, is too broadly based. It should include only representatives of government, industry and labor. These are the parties which can directly and immediately affect the commitments which must be made in order to make the plan operative.

The threat of injury test should be expanded to include as part of its definition the mobility due to import penetration, to generate adequate capital to finance the plan. H.R. 1950 includes this element. There must be an inducement for the petitioner to elect the optional track and thereby incur the investment obligation. That inducement is a stronger assurance that the serious injury test can be met. Without that assurance, the petitioner, if he would have to comply with the current test, would probably elect to file under the first option; namely, he would follow current law. The staff draft instead provides an assurance that relief will be granted after the injury test is met. USWA recommends that the assurance most pertain not to the provision of the remedy, but to the fulfillment of the injury test. If a plan is approved with government representatives participating in its development, then there is an inferential assurance that the trade remedy proposed by the ITC will be provided by the USTR.

The ITC's role should be less expansive than the staff draft's proposal. It should develop the degree of the trade relief needed to implement the plan, but not be in a position to veto the plan.

INDUSTRIAL TARGETING

We support the proposal that industrial targeting should be made actionable as an unfair trade practice under section 301. We concur with the 1984 committee report issued to accompany the Trade Remedies Reform Act of 1984 when it first flagged this practice as an unfair trade procedure:

> The inclusion of export targeting * * * reflects the growing recognition in the United States that foreign industrial targeting practices can have an injurious

impact upon the viability and competitiveness of United States industries * * *. Targeting is different from other potentially trade distorting practices in that it involves a combination of actions, any one of which may have marginal impact upon the industry's competitiveness, but which taken together artifically create a comparative advantage for the selected industry.

As new forms of unfair trade practices emerge, we should be able to respond quickly to their impact. Otherwise, our workers are the ones who lose their jobs and are irretrievably injured while we reinitiate the political consensus-making process. We should be able to react more promptly.

LABOR RIGHTS REPRESSION

One of the more encouraging aspects with the evolution of trade policy is its linkage with the promotion of labor rights. We have long been aware that trade policy has been influenced by foreign policy consideration. It is not, therefore, inconsistent that the linkage be expanded to consider labor rights violations. This linkage is particularly appropriate since the repression of these rights can have a trade distortion impact. In other words, the repression of these rights does constitute an unfair trade practice which should be reachable under a section 301 procedure. Under the current law as a result of the Pease amendment, eligibility for special preferential nontariff treatment of imports for Third World countries requires compliance with a labor rights provision. Its expansion to cover all traded goods would have a significant influence in reacting to abuses of labor rights. Furthermore, it would reinforce our commitment to the principle that our economic growth and welfare should not be promoted through the oppression of workers rights or a depression of an adequate standard of living. Economic exploitation of the workers of Third World countries should not be condoned by our trade policy.

ANTIDUMPING MEASURES

We are especially sensitive that with a voluntary export restraint arrangement in place, there will be an attempt to divert steel mill trade into steel fabricated trade. In the last Congress, the committee addressed the problem of diversionary or "downstream" dumping. According to the Locker report, 13.7 million tons of indirect steel imports in 1985 displaced domestic steel shipments. To the extent that these imports result from this new form of unfair trade, we should expand the reach of the antidumping provisions.

TRADE ADJUSTMENT ASSISTANCE

Mr. Chairman, we have been disappointed by the constant attack on the worker adjustment assistance program. It was barely extended for another 6 years. When it was suspended for almost 4 months, many workers were arbitrarily deprived of their benefits. The USWA would recommend that the program be upgraded and expanded to cover component parts suppliers; receive a better financing base; and extend the benefits to guarantee training.

This is the year for the Congress to reform the basic trade laws. Hopefully, it will result in a change in trade policy. As a member of the Labor-Industry Coalition on International Trade, we have

tried to indicate through H.R. 1950 the areas to which Congress should direct its attention. Legislative response to the trade crisis is imperative. Presently, the consequences of failure are lengthening unemployment lines. Speedy action by Congress can turn the situation around. It is for that reason that we appear before you today.

Mr. PEASE [presiding]. Thank you very much, Mr. Williams, for your excellent testimony. Quite obviously, you spent a lot of time developing it. There are a lot of good suggestions there, and we are grateful to have them from you.

In the absence, temporarily, of the chairman, let me raise a couple of points with you. First, I'd like to thank you for your comments on labor rights repression as an essential element of our trade policy. That reflects the generally progressive attitude of the United Steelworkers of America.

Also, on trade adjustment assistance, I was interested in your comments. We have had a great struggle trying to get the program even extended at all, as you know. And we are hopeful that in the process of writing this bill next week we might be able to make some further improvements in the program. I know you would share our wish to make that go beyond just a token program and actually serve to help workers who need adjustment to new circumstances.

I want to raise a couple of other things with you. At one point in your testimony you mentioned the ITC and say that you think the draft legislation goes too far in giving the ITC authority. I think that is in relation to industry adjustment plans under section 201. I wonder if you are aware of the concern which has newly come to the attention of this subcommittee about the composition of the ITC, and particularly the attitudes of two of the new members of the ITC, recent appointees of President Reagan.

Here we are on this subcommittee trying to strengthen our trade laws, trying to put authority in the hands of the ITC and the USTR, in the belief that we need to make sure that trading is fairer to our U.S. industries. And it appears as if the new ITC Commissioners appointed by the President are heading down an opposite path and that we may have a situation similar to that with some other boards like the National Labor Relations Board, where the people charged to carry out the laws passed by Congress are indeed instead intending to subvert those laws.

Are you aware of this situation and do you have any concerns about it?

Mr. WILLIAMS. Well, we certainly share the concerns, and I am pleased to hear that others have the same concerns.

I would like to say first so that I do not forget that we do appreciate very much your interest in the labor rights question and in the adjustment assistance question and appreciate your leadership in dealing with those issues.

Yes, we share the concern. As you know, we have had some extensive experience with the ITC and appeared before them at some length and share very much the view that the purpose, surely, of that commission and of those who serve on it is to assist in the resolution of the problem, not to persist, as we see it, in views that

obviously have not much relevance in today's international trading situation.

Mr. PEASE. Good.

Turning now to the President's program of voluntary restraints on steel, I share your concern that the targets as set forth in the 1984 legislation have not been met. There has been very little improvement in the last 2 years. That was to be a 5-year program. The idea of the restraint was to give the U.S. domestic steel industry an opportunity to modernize and retool and buy new equipment and become more efficient.

Here we are 2 years into that program, and imports are still at 25 percent and most American steel companies are still losing substantial amounts of money which certainly will not allow them to buy the new continuous casters and other equipment that they need. I have even thought of in terms of extending that program another 2 years to make up for the lost time we have had the last 2 years.

Do you think there is any hope that under present circumstances the steel industry will be modern and able to compete 3 years from now when this program expires?

Mr. WILLIAMS. Well, it would take a dramatic change in the circumstances for that to be possible. So we very much share your concerns. We think there are a number of things that need to be considered; obviously, as presently structured, the program will never achieve its goal. That is why we are proposing the codification approach.

Second, there should be recognition of the period during which it has not really approximated its targets and the damage that resulted from that. And in view of all of that, we certainly share the view that an extension and a continuation will undoubtedly need to be considered. To be candid, we have not spoken about that part of the subject very much publicly because we have been concentrating on trying to at least have the program become effective.

As you know, we did not think the program was enough in the first place and had been supporting the fair trade in steel approach which talked about a 15 percent level of import penetration. Even at 15 percent, that would be far more penetration than any other major market in the world permits.

I read the other day wbere the European Common Market is expecting import penetration levels, they expect to have them restrained. It will reduce them to 7 percent of the European market in this present year. And, of course, if we ever could contemplate anything like that, we would think we were in heaven.

So these are very serious problems, and given the present program, given the inadequacies for these 2 years, given present circumstances—this morning's paper talked about a decline in steel production and a decline in automobile production and so on—the problems are very much with us. It would not seem realistic to expect us to be away from these difficulties in 3 years.

Mr. PEASE. Thank you very much, Mr. Williams. Again, I think you have given us, as you always do, excellent and thoughtful testimony. I am grateful that you are where you are.

Mr. WILLIAMS. Thank you very much.

Mr. PEASE. Thank you, Mr. Chairman.

Chairman GIBBONS. Let me throw something out here. The arrangements that you have got now are essentially quotas administered by foreign countries. We are thinking very seriously of changing the thrust of the quota setup, and I would like to have you think about the fact that the United States would administer the quotas and would auction the quotas off.

I think that in the steel program you would get a far better administration of the program than you would essentially relying upon the foreigners to follow the general directions of these agreements.

Have you got any thoughts on that?

Mr. WILLIAMS. It is a new suggestion. Obviously, in terms of administering quotas, the more it is in our hands, why, the better, and the more likely it is to be administered effectively. I suppose the bottom line in our consideration would be that if it has an adequate, ultimate, quantitative effect, that is what we have been seeking, to reduce the market penetration to a manageable level. And the idea, as I understand it, in the draft that the resources, the money that comes from the auctioning might then be directed to adjustment assistance for our unemployed members. Obviously, we would be very much in favor of that since one of our concerns has been the entirely inadequate financing for that part of our efforts.

Chairman GIBBONS. I do not want to fool anybody or try to fool anybody or appear to be trying to be cute. I do not like quotas, but we have got them and they are an integral part of the system. And I am not trying to sabotage them by suggesting that we administer them and that we auction them here.

The way the quotas are now working—and they do not work very well, as you pointed out—the financial benefits that fall from those quotas generally end up in the hands of a foreign competitor rather than in the Treasury of the United States.

I would like to divert the financial benefits of quotas from the foreign entrepreneur to the U.S. Treasury. I think we could use it in an appropriate way for adjustment. And that is, of course, what your industry and your workers are going through now.

So I would like to have you give it some thought because I think that is going to be one of the themes of the bill that we develop next week. And, of course, it throws a lot of confusion in the minds of U.S. importers because they are just not used to doing business that way. But I think we could probably soften that blow by going for a temporary period of time to historic use in the United States and distribute some of the quotas that way and distribute others of them by the auction system until we learn more about how the auction system should work and how it should be regulated.

But I would like for you and your staff to give that some consideration so that we can do the best job on this.

Mr. WILLIAMS. Those are very commendable objectives, sir. We will be sure to do that. I will make sure I stay in touch with the committee staff on that question.

Chairman GIBBONS. The revenues, I would hope, from this auctioning off of quotas would be set aside for adjustment-type programs.

Mr. WILLIAMS. That would be very helpful because we need much more to be done in that area, obviously. Even if we think of some kind of a restoration and resurgence in the steel industry in the United States, in any foreseeable kind of scenario there are going to remain thousands and thousands of our former workers in that industry who will need support and adjustment assistance.

So that is a very commendable aim.

Chairman GIBBONS. Fine.

Mr. Schulze, have you inquired yet?

Mr. SCHULZE. Just very briefly, Mr. Chairman. Thank you; and I would like to thank you, Mr. Williams, for your testimony.

How does the EC limit import penetration?

Mr. WILLIAMS. With restraint agreements with various suppliers around the world. They have been using restraint agreements for many years, long before we began to do it.

Mr. SCHULZE. In other words, they are bilaterally negotiated restraint agreements?

Mr. WILLIAMS. Exactly.

Mr. SCHULZE. Are we in a position to penetrate their markets, pricewise, with specialty steels or any other steels?

Mr. WILLIAMS. I would not say to any significant degree. I suppose it is theoretically possible that if the exchange rate situation were to improve to a further and more significant degree in the higher value-added steel, that might be likely; but we have not been a significant exporter of steel for a long time.

Mr. SCHULZE. See, I would like us to get back to that. If they have artificial constraints, we ought to work to lower those, then, so that instead of them penetrating our markets I would like to see us penetrating theirs.

I presume we don't have any kind of an agreement to limit our exports. Is that correct?

Mr. WILLIAMS. No; it has not been necessary to have one. We don't have the possibility.

Mr. Sheehan would like to add a word on that.

Mr. SCHULZE. Sure.

Mr. SHEEHAN. Yes, Mr. Congressman; I'd like to maybe just expand a little bit on what I think is generally unknown in the United States about the Common Market.

The steel community in the Common Market has two kinds of internal controls. They have a price level below which they do not sell in their own market, and they also have a production control that helps keep that price level at the rate it is.

Obviously, they are doing this because they need funds also and are restructuring their industry; but in order to maintain that price level, they have to watch the imports that are coming in.

So what they have done is enter into bilaterals with their traditional trading partners whereby imports may enter below these prices, but only up to a certain tonnage so that the imports do not destroy the prices that have been set. They have negotiated a number of bilateral arrangements which have been in place now for quite a number of years.

As President Williams indicated he just read recently that the Community hopes to have the aggregate imports someplace around 13 percent; but they have had that level for quite some time. The

USA does not have a bilateral with the EC because we do not have significant trade in steel.

Mr. SCHULZE. Is that a ceiling or a floor?

Mr. SHEEHAN. That is a ceiling.

Mr. SCHULZE. It is.

Mr. SHEEHAN. If steel comes in above that ceiling, then they put their trading partner on notice that they intend to go after them; with their antidumping and antisubsidy provision, or whatever laws they have. They put their trade partners on notice that, if they are going to depart from this share, they are going to go after them.

Mr. SCHULZE. How much of a differential in the dollar/deutsche mark/European currency would there have to be for us to be competitive in their market?

Mr. WILLIAMS. Oh, we would have to go to that in more detail. I would not want to pretend to be able to answer that question off the top of our heads.

We will be happy to examine that.

Mr. SCHULZE. Do you know what the figure is, dollarwise, at which they protect their steel? Where is the ceiling?

Mr. WILLIAMS. Well, we have that information and could provide it. Again, I don't have it overall.

I do know, for example from the labor side of it, that before the exchange rate distortions really took off, as it were, European wages in the steel industry were, on a dollar basis, higher than ours; but the distortions in currency evaluation changed that dramatically.

So that in recent years our wage levels have been considerably higher than theirs, but it has not been a function of labor negotiations or anything of that kind. It has simply been a function of the relationship between the currencies.

They had, in fact, passed us and the Japanese, at one stage, had come really quite close to us.

Mr. SCHULZE. Thank you very much.

Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Guarini.

Mr. GUARINI. Thank you, Mr. Chairman.

We missed you both this morning at the legislative breakfast.

I want to just cover two short points with you. In regard to the dumping of steel and other products on our shores, there is consideration being given by the committee for the compensatory damages to be awarded a company who is injured.

As it stands now, they can dump with impunity; they are told to stop dumping; they go to the lawyer when there is a dumping case brought against them and the lawyer will tell them, "Well, it will take 6 or 9 months before anything will happen by the ITC so you can continue dumping until such time"; and then there is no penalty.

If we strike in a clause for economic loss of the corporation that is being hurt, it would then take the profit out of dumping and it would reduce to a civil action compensatory damages that could be gotten from the offending company.

Now, those civil damages could either go to a TAA fund or they could go to the corporation, however you want to keep healthy that industry and ameliorate the situation when the harm was done.

Do you take any position concerning compensatory damages in situations like dumping?

Mr. WILLIAMS. Well, we would obviously be very happy to help in the assignment of whatever resources came about as the result of that; and you are addressing a concern that we have been pointing out for some time and of which we are very supportive: that in this particular area of law a violator really benefits from the violation no matter what ultimately happens because ultimately nothing happens except maybe, under some circumstances, they are told not to do it any longer.

But for whatever period they have succeeded in dumping or what it is they have done that is wrong, nothing happens as a result of it.

Mr. GUARINI. So a cause of action for economic loss you would support?

Mr. WILLIAMS. We would support your efforts in that regard, right.

Mr. GUARINI. That is fine.

Now, would you please explain on the record why, in section 201, when it comes to a triparty committee that you want it limited to Government, business and labor: that the other parts of it, such as consumer representation, are not feasible as working instruments?

Mr. WILLIAMS. Well, we have noticed that the present draft talks about adding consumer interests and, I think, drops the Government off. That does not seem to us to be adding to the committee people who are really effective actors in determining what should be done, and drops off the Government whom we would see as a very important element in putting together a plan and having some commitment to what that plan might be.

I guess if there is another actor that we might suggest, I suppose it might be the banks or the financial community. One of our grave concerns in this whole debate, discussion and circumstance has been that our own banks here, our international banks in the United States, make more favorable arrangements often to assist steel industries in other countries than they are willing to make for the steel industry here in America.

So if there is a missing partner, it might be the financial community. We see the basic actors who can do something as being Government, labor and management; and we see it as critical that the Government be involved in the planning and in making the decisions and, therefore, there is a commitment to see that the plan is carried out.

Mr. GUARINI. So, basically, Government, labor and management would really be the heart of trying to put a program together.

Mr. WILLIAMS. Exactly.

Mr. GUARINI. If you get too many involved parts, it makes it much more difficult to come to a conclusion.

Mr. WILLIAMS. You are really inviting the involvement of people who have no direct way to insist that it be done in any event.

Mr. GUARINI. When you say bankers, how do you feel about an RFC, Reconstruction Finance Corporation?

Mr. WILLIAMS. Very much in favor of it.

Mr. GUARINI. Should we take Chryslers individually and Lockheeds individually, or should there be in place some mechanism where we could attend to sick industries?

Mr. WILLIAMS. I think there should be some mechanism in place with an overall responsibility and availability so we could provide some support and assist in some of these troubled areas, and do it not just in a crisis circumstance at the very last minute but do it earlier and with some hope of putting things together in a positive way.

I think that is an essential element in trying to deal with the sort of industrial tragedy in which we have been involved and in trying to move from the kinds of society and circumstance we have had in the past to shape the future in some way in which we maintain an industrial base in America and maintain some good jobs in America, maintain the strength necessary in terms of the growth of our own economy and the employment of our people and our national security interests, and all the rest.

But from our point of view that is a very fundamentally important part of the solution to all of this.

Mr. GUARINI. Perhaps if we planned more we would have fewer crises.

Mr. WILLIAMS. Exactly.

Mr. GUARINI. Thank you very much.

Mr. WILLIAMS. Thank you.

Mr. GUARINI. Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Frenzel.

Mr. FRENZEL. Gentlemen, thank you for your testimony.

When Chairman Gibbons talked about the sale of import licenses under quota conditions and was sort of asking how such a thing would operate, what would happen? Would steel importers bid on those tickets or would Luxembourg city plants bid on them or would U.S. Steel bid on them?

Who would up with those tickets?

Mr. WILLIAMS. Well, to be candid, this is really not a proposal we have been putting forward. It is something that has developed in which we are interested and certainly we will examine it.

I would be a little presumptuous if I pretended to lay out here exactly how it might work.

Mr. FRENZEL. Sure.

Mr. WILLIAMS. One can think of those kinds of alternatives and we certainly will.

Mr. FRENZEL. That is perfectly understandable. The reason I asked the question is yesterday we had a debate between the USTR, who was not present, saying that it would be a bureaucratic nightmare, difficult to put together, and one of the proponents, who was present, saying that that was silly. Anybody could have an auction.

I have been trying to think my way through the problem. The car dealers said yesterday they thought General Motors would buy all the tickets. I suppose it is different in shoes and textiles and steel.

So I was just trying to find out how you thought it might go; but I agree, it is a new concept and there are a lot of things we don't understand about it.

Mr. WILLIAMS. The chairman and yourself have now engaged our attention specifically. We will try to think our way through it along with you and respond.

Mr. FRENZEL. I appreciate that a great deal.

I notice in your testimony you talk about the unemployed and restoring some of those jobs. I am reading an article by Peter Drucker in the Foreign Affairs suggesting that one fundamental change in the world economy is that increased manufacturing production in developed countries has come to mean decreasing blue-collar employment; and that in the 1920's one out of every three Americans was a blue-collar worker in manufacturing.

He says it is now down to one of every six, but the trend is accelerating and that at this point it looks like no matter how large an increase in manufacturing production—and here we are talking, say, tighter imposition of quotas or restrictions on imports of one kind or another—it is not likely to reverse the long-term decline in the number of blue-collar jobs in manufacturing or their proportion in the labor force.

I would expect that you would not agree with that. Would you like to comment?

Mr. WILLIAMS. I read the same article and I read it with great interest. It seemed to me an unwarrantedly optimistic review of the state of the manufacturing industry in America.

It is my intention to have our own folks look at some of the statistics a little bit. In another way, there is absolutely no question that as we move forward as a society, as technological change continues to advance, as there is more robotization and all the rest, that we will be able to produce more goods with fewer people. That is going on continually.

There has been an enormous increase in the productivity of the steel industry in the United States just in the last 4 or 5 years. We are now producing steel in the United States more efficiently, in terms of man hours per ton, than anybody else in the world.

So, in a way, it is a false dichotomy for us to be debating whether we are going to have a manufacturing society or we are going to have a service/information kind of economy. The blunt truth of the matter, as we see it, is that we need both: that we need to maintain an industrial society, but there is no question that the long-term trends in that industrial society, with robotization and the rest, will mean more and more productivity with fewer and fewer man hours of effort.

So in order to provide employment we also need to develop our service/information economy; we need to find a way in which we can have employment for everyone in this society; and if, indeed, the amount of wealth we can produce with all the wonders of technology is such that we can do it with fewer hours of work by all of our people, then we need to consider some of those changes on down the road as well.

So it is not a matter of saying that Mr. Drucker is entirely wrong in the prospect he paints for the future. It is a matter of trying to determine how we can come to grips with all of those implications.

Our first concern is that for the strength of America we need to maintain a viable industrial sector and to provide there as much employment as we can. We also need a service and information sector. We also need to find a way to provide better jobs in that service and information sector, and provide better incomes.

It should not be written in stone that the only way a person can have a good income is to work in basic industry when, in fact, we can meet our needs there with fewer people on down the road and many of our children and their children are going to have to work in other sectors in the economy.

So it is a broad-based problem. There are no simple single answers.

Mr. FRENZEL. That was a good answer. I am sure that I agree with you.

I guess what I object to is measuring the vitality of our manufacturing industry by the number of jobs today as compared with jobs 10 years or 20 years ago. I am told that you have improved productivity in steel by 20 percent in 2 years, or something like that?

Mr. WILLIAMS. That is about right.

Mr. FRENZEL. Certainly you and the steel companies deserve enormous congratulations for that; but I don't think you got a credit in the bank for free jobs that are not going to be produced given the same amount of production.

Mr. WILLIAMS. But people do have to have jobs.

Mr. FRENZEL. I agree with that. I don't mean that we let them hang out to dry. I guess the point I am trying to make is that if there are a few less jobs in any particular industry, that may be a matter of great concern, but it also may not be: the industry may still be healthy.

Mr. WILLIAMS. The viability of the industry is fundamental——

Mr. FRENZEL. That is correct.

Mr. WILLIAMS [continuing]. And then the job opportunities. That gets us into all the questions of adjustment assistance and all the rest. I don't think, in any of our testimony throughout this industrial crisis, we have ever attempted to claim that there is any answer that would put 500,000 or 600,000 people back to work in the steel industry.

We have said the destruction is enormous. We have said the erosion is continuing. We have said, and do say, that we are on the brink of losing anything like a viable enough and strong enough steel industry in this country.

But we have also said concurrently that we need to pay much more attention, as we have discussed here again this morning, to the adjustment needs of those people who have no realistic prospect of returning to the industrial jobs that they have lost, but nevertheless are trained, educated, creative, hard-working, patriotic citizens of this society who deserve an opportunity to work and earn a living.

Mr. FRENZEL. Well, I would agree with that. We had a witness yesterday who indicated that our TAA retraining was 5 percent efficient. Some of this was blamed, of course, on the administration of the program, the availability of dollars and so on; but the numbers of people who had been through the program and actually

were in a job for which they received the training was alleged to be 7 percent up to 1981 and less than 5 percent from 1981 to 1984.

So whatever we are doing, we are not doing it very well. I guess everyone would agree.

Mr. WILLIAMS. Quite correct.

Mr. FRENZEL. Thank you very much. I enjoyed your testimony. I yield back the balance of my time.

Chairman GIBBONS. I do not want to keep you a long time, but I do want to get your expertise on this matter of the administration of quotas. I am not, in any way, trying to belittle what my good friend, Mr. Frenzel, has said. It will be difficult to do it because we never have done it.

But somebody administers quotas all over the world and somehow they allocate them. It always seemed to me that it is ridiculous that we expect a foreigner to do a respectable job in this field by dodging it ourselves.

I think that we can probably learn from what others have done in these fields and we can learn by experimentation ourselves. That is why I said that perhaps one of the ways to wean us off the present system and into a better system would be to distribute, for some period of time, the quotas in the United States—not all the quotas, but a large portion of the quotas—on a historical basis and then slowly institute an auctioning process in which we learned.

You would have to grant to the administering authority a large degree of authority to experiment; but I would think that all of our laws dealing with antitrust and market concentration, and things of that sort, would control any operation of the quotas; and it would not just be the fellow with the deepest pocket going out there and cornering the market.

There probably ought to be a secondary market in it, too, so that the quotas could be traded; but you would either have to use them or lose them. But you could trade them and I think that that would be an appropriate way to handle it.

I don't know the answer, but we would like to have some input from you all.

Mr. WILLIAMS. Well, you have certainly attracted our attention with the idea and we will give it attention, and your staff will hear from ours.

Chairman GIBBONS. Thank you very much.

If there are no further questions, we appreciate your coming here and helping us with this.

Mr. WILLIAMS. Thank you very much. We appreciate the opportunity, and thank you for your attention.

Chairman GIBBONS. Our next panel of witnesses is from the National Machine Tool Builders' Association, James Mack; National Electrical Manufacturers Association, Bernard Falk; and Red Hill Grinding Wheel Corp., Richard Caserta.

STATEMENT OF JAMES H. MACK, DIRECTOR OF PUBLIC AFFAIRS, NATIONAL MACHINE TOOL BUILDERS' ASSOCIATION

Mr. MACK. Thank you, Mr. Chairman.

NMTBA has, on several occasions, appeared before this committee to discuss the machine tool industry's request for temporary

import relief that we filed in March 1983 under the National Security Clause. We are pleased to report to you that the President and his Cabinet apparently met on our petition 3 weeks ago today, and that an announcement of a Presidential decision may finally be close at hand.

We would like to take this opportunity to publicly acknowledge the strong support that you and other members of the committee have shown throughout the prolonged pendency of our industry's import relief petition. The industry sincerely appreciates your collective efforts on our behalf.

We are pleased to appear this morning in support of the provision offered by Representative Kennelly imposing a 60-day time limit in which the President must decide whether to restrict imports that impair or threaten to impair the national security of the United States and a 15-day limit regarding the manner in which such restrictions will be imposed.

Since we have some assurance that a Presidential decision in our own case is imminent, it is unlikely that these statutorily imposed deadlines will have a direct bearing on the outcome of our petition. Nevertheless, we took this opportunity to testify because we believe that sharing our difficult experience with the 232 process—a process that is riddled with pitfalls and unnecessary delays—will perhaps help the committee to more readily appreciate the urgent need for 232 reform.

Our written submission documents that the principle on which the National Security Clause rests is completely different from those that underlie other statutory provisions for trade relief. Import relief, under the clause, is mandated whenever it is shown that imports threaten to impair the national security.

No showing of unfair trade practices or market manipulation, or that imports caused the conditions in the affected industry is required.

The machine tool industry has long been recognized by defense experts as uniquely essential to military production. The products and the technology of our industry are the essence of the industrial manufacturing process. It is clear, therefore, that the industry's request for temporary relief on national security grounds cannot be credibly challenged.

The legislative history illustrates that machine tools are precisely what Congress had in mind when it enacted the statute. The industry's petition was filed with the Secretary of Commerce on March 10, 1983. The industry requested that, based on then-current levels of high technology and defense-sensitive machine tool imports, temporary quotas be imposed on certain categories.

Pursuant to the statute, the Secretary commenced a comprehensive investigation of the industry's request and complied with his statutory obligation by completing it within 1 year. On February 28, 1984, he submitted a reportedly favorable recommendation to the White House for its language for well over 2 years.

Although we were aware that the statute imposed no deadline on the President, we assumed that the urgency of the Secretary's finding would in and of itself ensure a prompt—though not necessarily favorable—resolution of the issue. We could not have been more wrong.

From the time the petition left the Department of Commerce, it has borne the brunt of excessive interagency delay tactics instigated by the staff of the National Security Council and, we believe, deliberate subterfuge by NSC staffers determined to keep the issue from reaching the President's desk.

These actions reportedly stem from zealous adherence to free trade principles, considerations which have no bearing on import relief cases filed under the National Security Clause. Something is very wrong with a process which permits a national security issue of this magnitude to drag on for more than 2 years.

The fact that staff-level bureaucrats can exert enough influence to, in effect, bury an industry's petition is, in itself, a serious national security problem that simply cannot be ignored. In addition, the delay has exacerbated the national security threat posed by machine tool imports, which have increased from 27 percent of domestic production when the petition was filed in 1983 to 45 percent last year.

It strike us, Mr. Chairman, as somewhat ironic that industries seeking import relief under statutes unrelated to the national security are, by virtue of statutory deadlines imposed on Presidential decisionmaking, assured of a timely answer. By contrast, the open-ended nature of section 232 in effect operates as a trap for the unwary.

The law is on the books. It should either be enforced or it should be repealed. We are aware that there are no guarantees that any industry seeking import relief under section 232 will get the answer that it wants; but, Mr. Chairman, it should get a timely answer. Our national security depends on it.

Our written statement discussed, in addition to the 232 matter, industrial targeting as well as process patents and section 301 reform. We would be pleased to respond to your questions on any of these issues as well as our comments on section 232.

Chairman GIBBONS. Fine.

[The prepared statement follows:]

STATEMENT BY
JAMES H. MACK
PUBLIC AFFAIRS DIRECTOR
NATIONAL MACHINE TOOL BUILDERS' ASSOCIATION
BEFORE THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
APRIL 16, 1986

I. INTRODUCTION

Good morning, my name is James H. Mack. I am Public Affairs Director of the National Machine Tool Builders' Association (NMTBA), a national trade association representing more than 375 companies which account for approximately 85% of domestic machine tool production.

NMTBA appreciates this opportunity to comment on trade reform proposals currently under consideration by the Committee. We recognize that many members of this panel share our deep concern regarding the unmistakable decline in America's industrial competitiveness. Machine tools provide the core of any nation's basic manufacturing capability -- the underpinning of industrial strength and defense preparedness. A healthy machine tool industry is, we believe, essential in restoring the U.S. to its once-predominant position in the global marketplace.

Yet the future of America's basic manufacturing industries, including machine tools, will, to a considerable degree, be shaped by the substance and interpretation of U.S. trade laws. These laws ostensibly were enacted to provide statutory remedies to domestic industries in competitive distress. But all too often the ambiguous language and uneven and ineffective application -- coupled with the indifference of some government officials responsible for

their enforcement -- combine to make these "remedies" more elusive than real. We, therefore, applaud the bipartisan initiative to adopt meaningful revisions to the trade laws -- revisions which, as our comments below will illustrate, are long overdue.

As we shall note later in our testimony, imports imperil not only the continued viability of many American industries -- they imperil the national security as well. Therefore, we respectfully suggest that the Committee arrange for a closed briefing by the U.S. intelligence agencies in order to be fully apprised of the state of decline which currently characterizes many industries critical to this nation's defense preparedness. Such a session would, we believe, make your current deliberations more meaningful.

II. OMNIBUS TRADE REFORM LEGISLATION

A. National Security Import Relief

NMTBA has on several occasions appeared before this Committee to discuss the machine tool industry's request for temporary import relief filed in March, 1983 under Section 232 (the National Security Clause) of the Trade Expansion Act of 1962. We are pleased to report to you that the President and his Cabinet met on our Petition three weeks ago today and that an announcement of a Presidential decision may finally be close at hand.

We would like to take this opportunity to publicly acknowledge the strong support that Chairman Rostenkowski, Congresswoman Kennelly, and Congressmen Duncan, Russo, Schulze, Vander Jagt, and other members of this Committee have shown throughout the prolonged pendency of the industry's import relief

Petition. The industry sincerely appreciates your collective efforts on its behalf. As a matter of fact, it could be persuasively argued that it was pressure applied by you and your colleaques in the Congress which ultimately forced senior White House staff to end the incessant delays perpetrated by their subordinates and to finally bring our Petition to what appears to be an ultimate resolution.

We are pleased to appear in support of the provision, offered by Rep. Barbara Kennelly, imposing a 60-day time limit in which the President must decide whether to restrict imports that impair or threaten to impair the national security and a 15-day limit regarding the manner in which such restrictions will be imposed. (Similar provisions are contained in legislation introduced by Congresswoman Lynn Martin and Senator Charles Grassley and in the trade bill reported by the Energy and Commerce Committee.) These time limits go into effect only <u>after</u> an investigation -- which, under the statute, may take up to one year -- by the Secretary of Commerce supports a finding that imports pose a threat to national security. These deadlines would apply to any 232 case which is pending at the White House as of the date of the provision's enactment. Since we have some assurance that a Presidential decision in our own case is imminent, it is unlikely that these statutorily-imposed deadlines will have a direct bearing on the outcome of the industry's Petition. Nevertheless, we took this opportunity to testify because we believe that sharing our difficult experience with the 232 process -- a process riddled with pitfalls and unnecessary delays -- will perhaps help the Committee to more

readily appreciate the urgent need for 232 reform.

We thought it would be helpful to preface our remarks with a brief overview of the legislative history surrounding the National Security Clause. The Clause serves as a nexus between the trade and national security policies of the United States.[1] It reflects the longstanding policy of Congress, to which our Constitution gives primary responsibility for the management of international trade, that any advantages from international trade during peacetime must be subordinated to reasonable precautions for the national security. This policy, and the terms of the Clause itself, are entirely consistent with prevailing international law and are expressly acknowledged in Article XXI of the GATT. Indeed, it could hardly be otherwise for no obligation of the federal government is more important than the protection of national security.

Enactment of the Clause, originally part of the Trade Agreement Extension Act of 1954, was precipitated in part by serious

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[1]The essential core of the National Security Clause, on which the industry's Petition rests, is as follows:

> "If the Secretary [of Commerce] finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall so advise the President and the President shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not threaten to impair the national security, unless the President determines that the article is not being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security." 19 U.S.C. § 1862(b) (Supp. V 1981).

bottlenecks of militarily strategic equipment -- including machine tools -- which occurred during World War II and the Korean conflict. Congress recognized that considerations of deterrence and promptness of military response required a production capacity adequate to satisfy an immediate and sharp increase in the demand for such equipment.

Thus, it is evident that the principle on which the National Security Clause rests is completely different from those that underlie other statutory provisions for trade relief. Import relief under the Clause is mandated wherever it is shown that imports "threaten to impair the national security" -- no showing of unfair trade practices or market manipulation, or that imports caused the conditions in the affected industry, is required.

We want to emphasize that the machine tool industry has long been recognized by defense experts as uniquely essential to military production. The products and technology of this industry are the essence of the industrial manufacturing process -- they are, by definition, the "tools" of production. As such, machine tools are needed to produce every ship, plane, tank, missile, transport vehicle and other armament used by our armed forces, as well as essential elements of the supporting civilian infrastructure.

It is clear, therefore, that the industry's request for import relief on national security grounds cannot credibly be challenged. While we concede that some industries can proceed under Section 232 more appropriately than others, the legislative history illustrates that machine tools are precisely what Congress had in mind when it enacted the statute. We are not alarmists. This case

is not a 201 "escape clause" proceeding "wrapped in the flag." The threat to U.S. national security posed by machine tool import penetration (which accounted for more than 45% of domestic consumption in 1985) is real and growing.

Having reviewed the policy considerations which underlie the National Security Clause, we turn now to the particulars of our own 232 case. The industry's Petition was filed with the Secretary of Commerce on March 10, 1983. The industry requested that, based on then-current levels of high-technology and defense-sensitive machine tool imports, temporary quotas be imposed on certain categories. Pursuant to the statute, the Secretary commenced a comprehensive investigation of the industry's request -- a request supported literally by hundreds of pages of textual and statistical documentation. Secretary Baldrige complied with his statutory obligation by completing the investigation within one year. On February 28, 1984 he submitted a reportedly favorable recommendation on the industry's request to the White House -- where it has languished for well over two years.

Though we were aware that the statute imposed no deadline on the President, we assumed that the urgency of the Secretary's finding would, in and of itself, assure a prompt -- though not necessarily favorable -- resolution of the issue. We couldn't have been more wrong. From the time the Petition left the Department of Commerce, it has borne the brunt of excessive inter-agency delay tactics instigated by the staff of the National Security Council -- and, we believe, deliberate subterfuge by NSC staffers determined to keep the issue from reaching the

President's desk. These actions reportedly stemmed from zealous adherence to "free trade" principles -- considerations which, as we have explained, have no bearing on import relief cases filed under the National Security Clause!

Something is very wrong with a process which permits a national security issue of this magnitude to drag on for more than two years. The inordinate delay has, in fact, added a new dimension to the national security threat posed by machine tool imports -- the fact that staff-level bureaucrats can exert enough influence to, in effect, "bury" the industry's Petition is, in itself, a serious national security problem that simply cannot be ignored.

In addition, the delay has exacerbated the national security threat posed by machine tool imports, which have increased from 27% of domestic consumption when the Petition was filed in 1983 to 45% last year. While the NSC staff was trying to end-run the statute, U.S. machine tool companies were faced with crucial investment decisions concerning their future -- whether to move production capacity offshore and, in some cases, whether to remain in the business of machine tool manufacturing at all. Most machine tool builders were willing to postpone these decisions for a reasonable period of time, believing that an answer to the industry's Petition would provide them with a more informed climate for decision-making. However, choices such as these cannot be put off indefinitely -- the unmistakable trend towards offshore production illustrates the direction ultimately taken by many machine tool manufacturers. We cannot help but believe that the

resulting erosion of U.S. manufacturing capability could have been, at least partially, halted had the Petition been resolved in a timely fashion.

It was only late last month that the President's cabinet finally apprised him of the industry's Petition. The arguments were presented and, as of this writing, we are awaiting a Presidential decision. United States Trade Representative Clayton Yeutter told the Committee last week that he expected a decision "within a matter of days."

It strikes us as somewhat ironic that industries seeking import relief under statutes unrelated to the urgent issue of national security are, by virtue of statutory deadlines imposed on Presidential decision-making, assured of a timely answer. By contrast, the open-ended nature of Section 232 in effect operates as a trap for the unwary -- consider, for example, that NMTBA, in a good faith effort to comply with the statute and with the expectation that our request would be expeditiously considered, spent nearly one million dollars in attempting to "prove" our case to the government.

The law is on the books; it should either be enforced or repealed. Certainly we are aware that there are no guarantees that any industry seeking import relief under Section 232 will get the answer that it wants -- but it should get a timely answer. Our national security depends upon it.

B. Industrial Targeting

NMTBA strongly believes that broad-based trade reform legislation reported by this panel would be incomplete without a

provision adequately addressing industrial targeting practices by foreign governments. Such targeting practices include selectively impeding foreign competition in the home market, directly financing research and development, granting concessionary loans and special tax benefits, and restricting technology transfer -- when a combination of these practices, perpetrated schematically, operates to distort competition in a specific industrial sector. Such practices pose severe competitive problems for U.S. companies, whose products may be excluded from protected home markets, and/or for U.S. firms who must compete here at home with unfairly subsidized imports.

Attention to targeting practices was heightened in 1982 when Houdaille Industries, Inc., a Florida-based machine tool manufacturer, alleged that the Japanese government had unfairly targeted the Japanese machine tool industry in a variety of ways, though principally by creating a cartel of producers of numerically controlled machine tools. Members of the Committee may recall that Houdaille filed a petition under Section 103 of the Revenue Act of 1971, which authorizes the President, at his discretion, to suspend the availability of the investment tax credit for imported products if he determines that the country of origin engages in discriminatory acts or policies which unjustifiably restrict U.S. commerce. Despite strong support for Houdaille's position from many in his Cabinet, President Reagan -- in the wake of an intensive lobbying effort by the Japanese government -- denied Houdaille's request for relief. Houdaille's request, though ultimately

unsuccessful, did provide the first extensive substantiation of the destructive impact wrought by targeting in the machine tool industry. We appreciate the strong support that Congressman Gibbons showed throughout the Houdaille proceeding.

Truly effective statutory remedies available to U.S. victims of industrial targeting must take into account the fact that often the adverse competitive impact wrought by targeting practices is not felt until after those practices have ceased. We are aware that, traditionally, retaliation against unfair trade practices ends when the practices themselves end. But we must not permit targeting beneficiaries to continue to reap the unjust enrichment of past practices which facilitated their penetration into the U.S. market. For example, a foreign government may employ targeting practices in order to nurture the growth of one or more of its "infant" domestic industries. The targeting may stop, however, once those industries reach a level of competitive maturity which permits them to then unfairly displace their American counterparts. It is, therefore, appropriate that sanctions be imposed on targeting recipients and/or that compensation be provided to targeting victims in such circumstances. Potent remedies would create a powerful deterrent by putting foreign governments on notice that their targeting practices will not be tolerated.

And, in order to keep future Houdaille-type cases from arising, NMTBA believes that proof of competitive injury should not be a prerequisite for any form of statutory relief. Since the harm caused by targeting may take several years to manifest, relief made available only after a showing of actual injury could very well come

too late -- by the time the injurious effects can be documented, the industry may already have suffered irreparable erosion of its competitive standing. In addition, the careful monitoring by U.S. trade agencies of foreign governments known to have perpetrated targeting practices in the past will also be effective in nipping any such future practices "in the bud."

We understand that the Committee may consider the application of countervailing duty law as the method for determining relief in industrial targeting cases. A beneficial aspect of the CVD law is the non-discretionary nature of the remedy -- CVDs are automatically imposed by the U.S. once the level of a foreign government's subsidy granted to imported articles has been determined. It is often true, however, that the most effective relief is the denial of U.S. market access to the offending party. We are, therefore, concerned that CVDs may ultimately prove to be an inadequate remedy since injunctive relief cannot be granted under the CVD law.

Should the Committee decide to provide targeting relief under Section 301, we urge you to adopt statutory language which makes clear that once targeting -- <u>past</u> <u>or</u> <u>present</u> -- has been proven, relief to U.S. victims is mandatory. We believe that such a provision would provide a formidable deterrent to future targeting conduct. Discretion would still be permitted concerning the appropriate form that relief would take -- including negotiations to terminate the unfair targeting, where such negotiations would still prove effective for U.S. victims.

Whatever the statutory basis for relief, targeting must be defined in a manner which provides reasonable guidelines for U.S. industries which are seeking relief, and which affords adequate notice to our foreign competitors. It must be clear that unlawful targeting includes a combination or system of practices which, individually, may constitute permissible governmental assistance, but which become unlawful when operated as part of a coordinated effort to place targeting recipients at an unfair competitive advantage.

C. Enforcement of U.S. Trade Rights Under Section 301

Unfair trade practices are generally dealt with in the context of violations which occur in the "host" country. But consider the situation in which a foreign government engages in an unfair trade practice in a market outside the U.S., the effect of which is to place U.S. exporters who may be competing for business in that third country at a competitive disadvantage. The export financing "war chest" was created in response to precisely the same dynamic -- "war chest" funds currently are used to offset export credit subsidies provided by foreign governments whose companies are competing with U.S. exporters in third countries. And, during last year's reauthorization of the Export Administration Act, Congress adopted a provision which permits our government to restrict the U.S. imports of any of our COCOM partners found to have violated COCOM agreements regarding exports to third countries. NMTBA urges the Committee to give some thought to providing similar deterrents under Section 301 -- perhaps through the denial of access to the U.S. market.

D. Protection of U.S. Intellectual Property Rights

NMTBA commends the proposal to expand the list of unfair trade practices under Section 337 to include the unauthorized importation of an article or process which infringes on a U.S. patent, trademark or copyright. We are also pleased to see that there appears to be no injury requirement imposed in such cases, nor apparently is there a requirement that the industry seeking relief from unauthorized importation necessarily be "efficiently and economically operated." The proposal seems to recognize that the primary focus of inquiry in such cases should concern whether any unauthorized importation has occurred. However, we respectfully suggest that, if this is the Committee's intention, the statutory language should be clarified.

III. CONCLUSION

The U.S. machine tool industry is determined to survive -- and survive it will. But the process of survival for many companies in search of more competitive manufacturing climates is likely to include a transfer of more productive capacity and jobs offshore. We, therefore, believe that meaningful trade reform legislation will play a major role in reversing this disturbing trend. Thus, it is not an exaggeration to say that the future of U.S. industrial competitiveness will be determined by the outcome of this debate.

Thank you for providing us with this opportunity to present our views. We would be happy to respond to your questions.

STATEMENT OF BERNARD H. FALK, PRESIDENT, NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION

Chairman GIBBONS. Mr. Falk.

Mr. FALK. Thank you, Mr. Chairman.

I am Bernard H. Falk, president of the National Electrical Manufacturers Association. In the interests of time, I will highlight just some of the points from our written testimony with a request that the complete statement, sir, be included in the record.

Chairman GIBBONS. Yes, sir. It will be.

Mr. FALK. Thank you.

A crisis in U.S. trade exists and at its core is industrial competitiveness. We feel it is important to realize, however, that whatever we do in modernizing U.S. trade law—and there are certainly things we should do—it will count for little if we do not give the fundamentals of economic competitiveness the top priority.

These fundamentals, we believe, are: One, reduction of the Federal budget deficit; two, adjustment of monetary fiscal and trade policies to ensure a realistic rate of exchange—and we applaud the recent administration actions with regard to exchange rate valuation; and three, adoption of tax policy which promotes investment, plant modernization, research and development, and worker training.

Now, I would like to comment briefly on two of the subject in the subcommittee's discussion draft; namely, section 201 and the forthcoming trade negotiations.

Section 201: The ITC, in our opinion, is somewhat constrained in its ability to recommend appropriate relief to the President due to the limited options given to the Commission and the inability of the Commission to consider in its decisionmaking the impact of relief on consumers.

NEMA believes that a broadening of the options is needed. The present options—namely, quotas, tariffs, trade adjustments or combinations—may no longer be totally responsive to the international trading environment.

This came home to us and was particularly obvious during the 1984 section 201 case on copper. We, the association, NEMA, opposed the petition not on the grounds that the domestic copper industry was not being hurt by imports, but because the nature of the relief requested, that is, quotas or tariffs—would have hurt electrical manufacturers as consumers of copper.

We would have been disadvantaged competitively by a two-tier price of copper: a higher U.S. price and a lower world price. Even though the ITC found injury, the President denied relief precisely because of the impact that quotas or tariffs would have had on other sectors of the economy.

Indeed, one Commissioner voted saying that the copper industry deserved relief, but that no relief option available would help the

industry. If the Commission, in its investigatory process, could have evaluated the import merits of the case in conjunction with the economic effects on consumers of the various broadened relief options, the Commission's effectiveness and usefulness, in our opinion, would have been greatly enhanced.

We do not support proposals which would transfer decisionmaking authority from the President. The President, we believe, is in the unique position in deciding on relief by hearing from all sectors of the economy and various branches of Government, including State, Commerce, Treasury and the U.S. Trade Representative. Through this process, the granting of relief takes into account the overall national economic interest.

On the subject of trade negotiations, here are some specific areas of concern to the U.S. electrical manufacturing industry.

Third country subsidies: The U.S. industry is stymied in its ability to take specific action against foreign export subsidies used in sales to third-country markets. American trade law provides administrative relief through the countervailing duty law when a subsidized product enters the American market.

However, if the subsidized product is sold in a third country, particularly developing nations, the United States is not able to touch the transaction. The use of third-country subsidies and transactions results in a loss of export sales and negatively affects our merchandise balance of trade. Such practices must be made specifically actionable in American trade law through agreement at the GATT that such practices are covered by the GATT Subsidies Code.

Market access and particularly Government procurement: One of the major failures for our industry in the 1979 Tokyo round negotiations was the inability to obtain a Government Procurement Code which provided market access for the heavy electrical equipment industry.

This product sector has been disadvantaged by closed foreign markets and a host of unfair trade practices ranging from cartelized sales practices to subsidies. The congressionally mandated section 302 (c) and (d) reports by the administration pose a series of recommendations setting forth means to obtain reciprocity and market access for the heavy electrical equipment industry.

The primary recommendation which the administration has undertaken is the attempt to expand the list of purchasing entities covered by the Government Procurement Code. This process started in November 1983 and, as of yet, has met with no results of any nature for our industry.

Strong action is needed in the trade negotiations to deal with this continued lack of market access.

Mr. Chairman, and members of the subcommittee, I started by saying that American trade is in a crisis; part of that crisis is due to an ineffective trade strategy. Trade law reform that addresses unfair or injurious trade practices is a component of that strategy.

The basics for a trade strategy must focus on competitiveness rather than on policies of protectionism. American companies can compete effectively in the world economy and be the leaders in an open international trading system, but they depend on a U.S. strategy that anticipates and not reacts, a strategy that is competitive and not protective.

Mr. Chairman and members of the subcommittee, thank you for this opportunity to present our views.

Mr. PEASE [presiding]. Thank you very much, Mr. Falk.

[The prepared statement follows:]

STATEMENT OF

BERNARD H. FALK

PRESIDENT

NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION

Mr. Chairman and Members of the Subcommittee:

I am Bernard H. Falk, President of the National Electrical Manufacturers Association (NEMA). I am here today to present NEMA's views on trade policy in general and on trade reform legislation specifically.

Mr. Chairman, NEMA and its members are pleased that your important Subcommittee has devoted so much time and effort to the issue of trade policy and trade reform.

NEMA is the nation's largest trade association for manufacturers of products used in the generation, transmission, distribution, control, and end-use of electricity. The products are covered in eight divisions in the Association: lighting equipment, electronics, industrial equipment, building equipment, insulating materials, wire and cable, power equipment, and medical diagnostic and therapy systems equipment. The 560 member companies represent some $60 billion in domestic sales and over 500,000 jobs are involved. In 1985, exports of these goods totalled $ 7.5 billion while imports totalled $ 10.5 billion. Attached to my statement is a chart showing the trade balances since 1978.

For nearly three decades, NEMA's role has been (1) to foster the growth and maintenance of an open international trading system which provides equity and fairness, (2) to harmonize,

reduce, and eliminate barriers to trade on a basis to assure equivalent competitive opportunities and market access, and (3) to ensure the existence of adequate procedures to safeguard industry and labor against unfair or injurious competition.

A crisis in United States trade exists and at its core is industrial competitiveness. It is important to realize, however, that whatever we do in modernizing U.S. trade law--and there are things we should do--it will count for little if we do not give the fundamentals of economic competitiveness the top priority.

These fundamentals, as recognized in NEMA's Statement of Trade Principles (attached), are:

--Reduction of the federal budget deficit thereby easing pressure on interest rates and reducing the overvaluation of the dollar,

--Adjustment of monetary, fiscal, and trade policies to ensure a realistic rate of exchange,

--Adoption of a tax policy which promotes investment, plant modernization, research and development, and worker training.

Action on these fronts is critical in meeting the challenge of international competitiveness. Some action has occurred on the exchange rate valuation and we applaud the Administration's efforts and urge continued resolve. Probably the two most important "trade bills" which the Congress could pass would be measures to further reduce the federal deficit and the passage of a tax bill containing the elements above.

Mr. Chairman, trade law reform plays an important role and is a significant component in trade policy. We have reviewed the Subcommittee's "discussion draft" of trade law reform and I would like to present our recommendations.

Section 201

The International Trade Commission is constrained in its ability to recommend appropriate relief to the President due to the limited options given to the Commission and the inability of the Commission to consider in its decision-making the impact of relief on consumers. NEMA believes that a broadening of the options is urgently needed. The present options--quotas, tariffs, trade adjustment, or combination--may no longer be totally responsive to the international trading environment.

This was particularly obvious during the 1984 Section 201 case on copper. NEMA opposed the petition, not on the grounds that the domestic copper industry was not being hurt by imports, but because the relief (quotas, tariffs) would have hurt electrical manufacturers as "consumers" of the copper. Electrical manufacturers would have been disadvantaged competitively by a two-tier price of copper--a higher U.S. price and a lower world price. Even though the International Trade Commission found injury, the President denied relief precisely because of the impact that quotas or tariffs would have had on other sectors of the economy. Indeed, one commissioner voted

saying that the copper industry deserved relief, but that no relief option available would help the industry. If the Commission, in its investigatory process, could have evaluated the import merits of the case in conjunction with the economic effects on consumers of the various (broadened) relief options, the Commission's effectiveness and usefulness would have been greatly enhanced.

NEMA does not support proposals which would transfer decision making authority from the President. The President is in the unique position in deciding on relief by hearing from all sectors of the economy and various branches of government including State, Commerce, Treasury and the U.S. Trade Representative. Through this process the granting of relief takes into account the overall national economic interest.

Section 301

The ability to take action against foreign trade practices that violate international trade agreement or burdens or restrict U.S. commerce in an unjustifiable, unreasonable, or discriminatory fashion requires maximum flexibility in investigation and in determination. As a result, NEMA supports Section 301 in the Trade Act of 1974 as amended. Section 301 is a very useful and potent tool when used effectively and forcefully.

Transfer of authority is unwise. Section 301 cases involve and require the participation of various departments and

interagency study. The President is in the best position to balance these interests and in determining appropriate action.

The listing of "targeting" or other specific practices as actionable in unneeded because such practices are covered in current 301 language. No international definition of "targeting" exists and to apply unilaterally a definition invites retaliation. In addition, certain American practices are arguably "targeting."

Setting a time limit on implementing decisions is unwise because it overlooks the need for each case to be handled as the merits and special features so dictate.

Intellectual Property Protection

NEMA supports the removal of the injury test requirement in Section 337 cases alleging patent, trademark, or trade secret infringement. The Administration's April 7th announcement in support of this change is welcomed.

The early adoption of the drafted GATT Anti-Counterfeiting Code is needed and multilateral efforts in the new trade round should focus on the negotiation of a code of conduct encompassing international norms for patent, copyright, trade secrets, and other intellectual property rights. The Administration should continue its bilateral efforts to encourage foreign government development and enforcement of intellectual property rights.

Trade Negotiations

The United States needs to improve and strengthen the international trading system, achieve freer trade, and increase market access. NEMA's position is consistent with the stated purpose of the Trade Acts of 1962, 1974, and 1979. NEMA's trade policy embodies a reaffirmation of an open trading system through multilateralism while recognizing the important role which bilateral actions can play. Two actions implicitly recognize this position:

-- NEMA support of negotiating a bilateral free trade agreement with Canada (see attached statement), and

-- NEMA support for a new round of multilateral trade negotiations in the GATT.

The Administration should seek specific negotiation authority from Congress at the earliest practical moment. Also, the granting of negotiation authority should not be linked to the formation or convening of an international monetary conference. Thorough and timely consultation by the Administration with the private sector before and during the negotiations is critical in achieving a successful outcome and Congressional support.

While a whole of host of issues have been discussed and presented by the Administration--ranging from agriculture, to services, to investment, to safeguards--I would like to comment on three, in addition to my earlier comments on intellectual property rights, which are of particular concern and interest to NEMA.

Third Country Subsidies

The U.S. industry is thwarted in its ability to take specific action against foreign export subsidies used in sales to third country markets. American trade law provides administrative relief through the countervailing duty law when the subsidized product enters the U.S. market; however, if the subsidized product is sold in a third country, the U.S. is not able to touch the transaction. The use of third country subisidies and transactions results in a loss of export sales and negatively affects our merchandise balance of trade. Such practices must be made specifically actionable in American trade law through agreement at the GATT that such practices are covered by the GATT Subsidies Code.

Market Access/Government Procurement

One of the greatest failures of the 1979 Tokyo Round negotiations was the inability to obtain a government procurement code which provided market access for the heavy electrical equipment industry. This product sector has been disadvantaged by closed foreign markets and a host of unfair trade practices ranging from cartelized-sales practices to subsidies (see attachment).

The Congressionally-mandated Section 302(c) and (d) reports by the Administration (produced in 1981) proposed a series of recommendations setting forth means to obtain reciprocity and

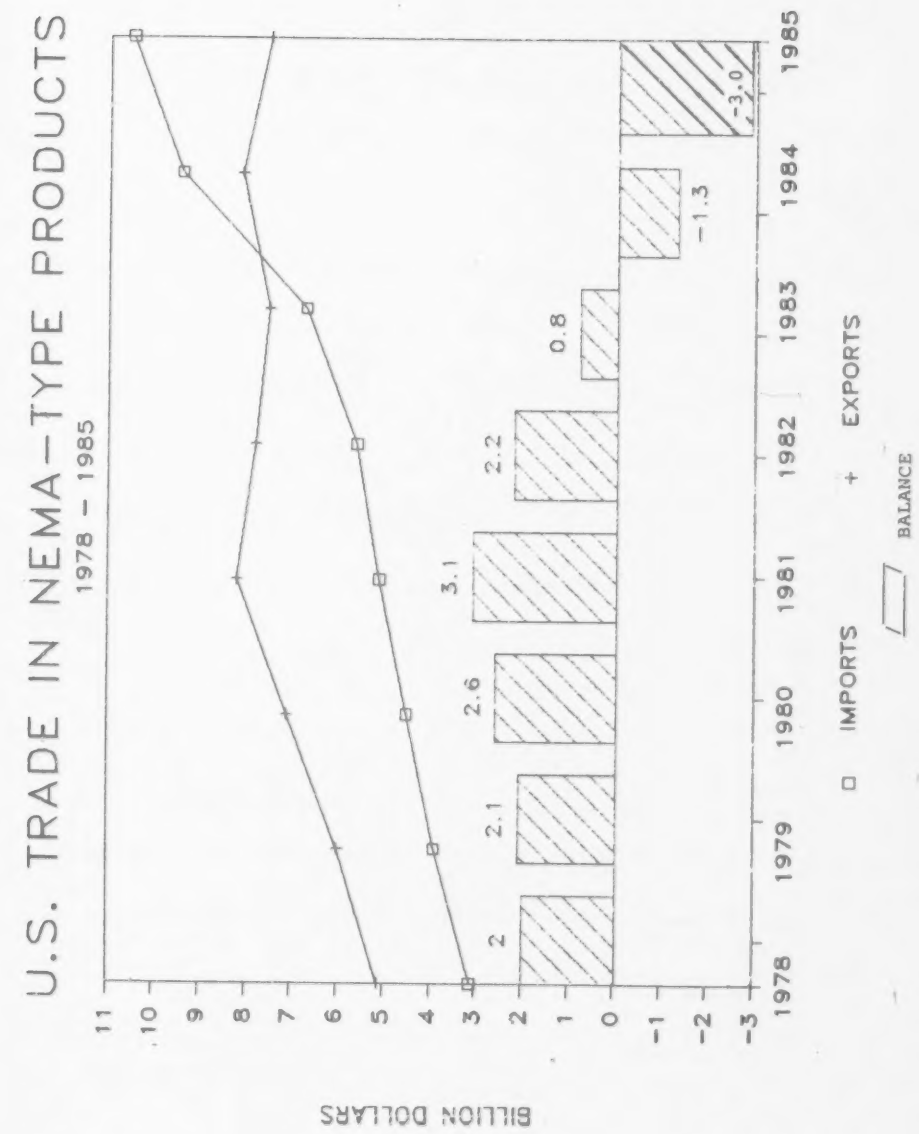
market access for the heavy electrical equipment industry. The primary recommendation which the Administration has undertaken is the attempt to expand the list of purchasing entities covered by the Government Procurement Code. The process started in November 1983 and has met with no results for our industry. Strong action is needed in the trade negotiations to deal with this continued lack of market access.

GATT Contracting Party Responsibilities

The GATT Contracting Parties agree unconditionally to provide most favored nation (MFN) treatment to all member countries. This responsibility falls on each and every member. The only derivation is in Part IV of the GATT where special and differential treatment (i.e., non-MFN) is given to the less developed countries. Due to the rising standards of living and industrial competitiveness in certain of these "less developed" countries, the new trade round must address the level and degree when a contracting party should assume the full responsibilities incumbent on it in support of an open and fair international trading system.

Mr. Chairman, I started by saying that American trade is in a crisis. Part of that crisis is due to an ineffective trade strategy. Trade law reform that addresses unfair or injurious trade practices is a component of that strategy. The basics for a trade strategy must focus on competitiveness rather than on policies of protectionism. American companies can compete effectively in the world economy and be the leaders in an open international trading system. But they depend on a United States strategy that anticipates, not reacts; that is competitive, not protective.

Thank you for this opportunity to present our views.


U.S. TRADE IN NEMA—TYPE PRODUCTS
1978 – 1985
BILLION DOLLARS
11
10
9
8
7
6
5
4
3
2
1
0
-1
-2
-3
1978
1979
1980
1981
1982
1983
1984
1985
2
2.1
2.6
3.1
2.2
0.8
-1.3
-3.0
□ IMPORTS
+ EXPORTS
BALANCE

A DECLARATION OF TRADE PRINCIPLES

FOR THE NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION

The National Electrical Manufacturers Association believes the United States needs a constructive and comprehensive trade strategy containing these principles:

* Reduction of the federal budget deficit thereby easing pressure on interest rates and reducing the overvaluation of the dollar.
* Adjustment of monetary, fiscal, and trade policies to ensure a realistic rate of exchange.
* Cooperation among government, industry, and labor in developing appropriate trade policies based on a broad national consensus.
* Adoption of a tax policy which promotes investment, plant modernization, research and development, and worker training.
* Balanced administration of export controls so as not to restrain legitimate export sales while controlling export sales of militarily critical technologies.
* Forceful and consistent use of executive and legislative measures to assist in bringing about equivalent competitive access for American manufacturers in foreign markets.
* Improved legal remedies to counter unfair or injurious trade practices.
* Modernization of the antitrust laws to permit joint industry efforts in trade.
* Improvement in export credit facilities so that American manufacturers can be competitive in the world marketplace.
* Resistance to domestic protectionistic actions which are not aimed at achieving equivalent competitive access.
* Reaffirmation of an open international trading system through multilateralism while recognizing the role bilateral actions can play.
* Negotiation of international agreements to dismantle non-tariff barriers to trade and investment.

These principles provide the basics for a trade strategy which has its focus on competitiveness rather than on policies of protectionism. American companies can compete effectively in the world economy and be the leaders in an open international trading system. But they depend on a United States trade strategy that anticipates, not reacts; that is competitive, not protective.

NEMA

ADOPTED BY THE NEMA BOARD OF GOVERNORS ON NOVEMBER 11, 1985

NEMA STATEMENT CONCERNING A BILATERAL FREE TRADE AGREEMENT BETWEEN THE UNITED STATES AND CANADA

NEMA supports the entering into negotiations between the United States and Canada for the purpose of arriving at a free trade agreement. There should be no preconditions on what can and cannot be discussed. Key prinicples which NEMA believes should be used in the negotiations are:

1. A bilateral free trade agreement must confer balanced benefits to both the United States and Canada.

2. Negotiations on the meaningful reduction in Canadian federal and provincial subsidy programs, agreed limits over the Canadian investment restrictions, and changes in federal and provincial procurement practices must be integral parts of any U.S. negotiations with Canada. In this regard, the U.S. Government must not commit itself to any tariff cuts prior to obtaining Canadian agreement to eliminate these non-tariff trade and investment barriers.

3. Other non-tariff trade barriers, such as protection of intellectual property rights, should also be considered in any free trade negotiations.

4. The U.S. Government should consult with the U.S. industry and provide adequate opportunities for timely industry advise before and during the negotiations.

5. Any free trade agreement should require that all products eligible for duty-free entry into the United States under the agreement must have a Canadian value added level high enough to prevent non-Canadian companies from benefitting from the duty-free access, with an unlimited allowance for the value of U.S. components.

6. A bilateral agreement should provide for the mandatory reimposition of duties in the event of non-fulfillment of the conditions of the agreement.

7. A bilateral agreement should contain an adequate dispute settlement mechanism.

8. Free trade negotiations with Canada should also address other issues, such as how temporary trade distortions caused by currency fluctuations and injury to a domestic industry by duty-free entry of products will be handled, to avoid impairment of the benefits under the bilateral agreement.

Competition in the International Heavy Electrical Equipment Industry

The international market for Heavy Electrical Equipment outside the United States is characterized by protected home markets, production capacity far exceeding demand, and cartelized sales practices in third country markets coordinated through the International Electrical Association (IEA or Association). These aspects of the international Heavy Electrical Equipment Market insulate foreign manufacturers from international competition while at the same time providing a strong incentive to sell their equipment at low prices in the United States.

1. Protected Home Markets

It is well known that the manufacturers of heavy electrical equipment in Europe and Japan enjoy the benefits of protected home markets and an assured domestic sales base that is inaccessible to the U.S. industry. In part, the closure of these markets stems from a recognition of each government's interest in maintaining an industry capable of manufacturing equipment critical to the national electric transmission system.[1] For example, the International Trade Commission in a 1984 study on the effects of foreign targeting in the European Community noted:

> The production of heavy electrical equipment has been viewed by the Governments of numerous EC countries as vital to national security interests. For this reason, West Germany, France, the United Kingdom, and Italy, in particular, have fostered industries capable of supplying virtually all of their intracountry requirements.[2]

Economics also play a role in the decision to protect the national markets of foreign EHV manufacturers. For example, a

study concerning heavy electrical equipment prepared for the United Nations Conference on Trade and Development notes:

> A secure base of profitable home orders is widely held to be sine qua non of survival, enabling the suppliers to sustain the overheads, to acquire the experience in manufacturing . . . current designs which is needed to progress along the "learning curve" to the point where product reliability is is assured and where production costs are at their lowest, and to obtain the necessary "shop window" to display the technical merits of their products to foreign customers.[3]

The protected home markets in the European Community and Japan have been shielded from the attempts to liberalize trade under the GATT rules. A recent report by the U.S. General Accounting Office notes that a number of European countries the major purchasers of heavy electrical equipment such as power circuit breakers and power transformers are government-owned utilities that are excluded from the Government Procurement Code.[4] The GAO report observes that this exclusion allows procurement officials in these countries to purchase heavy electrical equipment without considering imports and comments that the European unwillingness to include this equipment under the Code is "indicative of the importance they place on protecting their heavy electrical industries".[5] Indeed, "nationalistic procurement" dominates the supply of heavy electrical equipment.[6]

Even where Europeans and Japanese utilities are not government-owned, there is a severe nationalistic bias that precludes purchase of heavy electrical equipment from non-domestic sources. These practices can be traced to "the perceived national benefits in terms of the balance of payments, employment of skilled manpower, security of supply and . . .

technological chauvinism based on the quest for international prestige and influence."[7] The industry's specially protected status is frequently reflected in the close relationships between governments, utilities and equipment suppliers, which have shared interests in electrification and in maintaining a viable heavy electric equipment industry.[8]

The existence of protected home markets for European Community and Japanese producers have been documented in other reports, including the President's decision in the 1972 Section 232 case and reports prepared for the United Nations Commission and the Senate Commerce Committee.[9] The protected foreign markets for heavy electrical equipment have also been acknowledged in Canadian antidumping proceedings involving imports from Japan and the European Community. In a 1980 case involving electric generators from Japan, the Canadian Antidumping Tribunal commented that producers in Japan and, with the exception of Sweden, in Western Europe "benefit from having home markets which . . . are apparently closed to foreign competition."[10] In a 1983 opinion involving electric generators from Italy, the Canadian Tribunal, commenting on the importance of exports in the heavy electrical equipment industry, observed that Japanese and European suppliers "can engage in aggressive export strategies based on protected home markets."[11]

2. IEA "Coordination" of Third Country Export Sales

In marketing outside their closed home markets, the Japanese and European Heavy Electrical Equipmert manufacturers benefit

from additional protection as a result of the activities of the IEA. According to a report prepared for the Home Committee on Interstate and Foreign Commerce in June, 1980, the IEA is a cartel comprised of heavy electrical manufacturers from over 50 European and Japanese companies.[12] The cartel's operations extend to most of the markets of the non-Communist world outside of the United States, Western Europe and Japan and cover sales of most types of heavy electrical equipment. In his study for the United National Committee on Trade and Development, John Surrey notes:

> Apart from the United States firms (which are subject to stringent anti-trust legislation), nearly all the international suppliers are members of the International Electrical Association, which collates contract information on behalf of its members, determines minimum or reference prices in export markets and decides which of the members should submit the lowest bid. The Association's long existence testifies to the value that its members place upon it as a means of regulating competition in the international arena.[13]

Membership in the IEA is open to manufacturers of electrical equipment and related industries. The Association is divided into specific product sections and members join in sections that are of particular concern to their business.[14] The IEA documents contained in the Epstein Report indicate that IEA procedures are intended for use in connection with Heavy Electrical Equipment sales in any country outside of Canada, the European Community, East Germany, Finland, Sweden, Switzerland, and the United States.[15]

The Epstein Report analyzes the economic effects of the IEA and asserts that the activities of the Association adversely

affect U.S. electrical equipment manufacturers in several ways. First, the IEA places American producers at a disadvantage in seeking to make export sales to third countries.

> When cartel members expect American firms to bid for contracts in these territories, cartel pricing arrangements can be suspended. Members then can bid as low as they think necessary to win the order from the Americans. The collusive arrangements of the cartel generally result in higher prices and, thus, facilitate the members' ability to absorb lower profits or even occasional losses on export sales when in direct competition with U.S. firms.[16]

Second, the reduced export sales activity for U.S. domestic manufacturers attributable to IEA activities "results in cost disadvantages due to an absence of technical expertise associated with the cumulative learning effects of large volume production (,which) . . . heightens vulnerability" to cyclical declines in the market for electrical equipment in the United States.[17]

Third, as U.S. manufacturers lose orders in the markets of developing countries, their sales are limited by the slower growth of the home market. "Lacking a strong position in export markets (U.S. firms) are in a weaker position to meet the legitimate competition of European and Japanese producers in the United States."[18]

For all of these reasons, "United States policy can ill-afford to neglect illicit restrictions on international trade that jeopardize the dynamic competitive position of the United States industry."[19]

3. The Vulnerability of the U.S. EHV Industry to Import Competition

The characteristics of the international Heavy Electrical Equipment market places the U.S. domestic heavy electrical

industry in a vulnerable position. As discussed above, every major country producing this equipment except the United States places considerable strategic importance on the protection of its domestic industry. As a result, utilities in most Western European countries will not seriously entertain tenders for Heavy Electrical Equipment, from U.S. domestic producers.[21] At the same time, foreign companies can rely on a steady stream of sales in secure home markets at profitable prices. These same foreign manufacturers benefit from the market coordination effected by the IEA cartel in third-country markets.

In a time of rapidly increasing demand for equipment, these circumstances might be less serious. However, events affecting the international market -- including the Arab oil embargo and third-world debt crisis -- have resulted in a significant decrease in demand for Heavy Electrical Equipment, leading to a worldwide over-capacity for the manufacture of these products.[22] With European and Japanese markets largely closed to international competition, the United States is the most important single market that is open to international competition.

As a result, European and Japanese manufacturers have turned to the U.S. market and are using low prices to win orders that will help utilize their excess production capacity. The result has been deterioration of the domestic industry's sales in the United States with disastrous effects on production costs, employment and profitability.

ENDNOTES

1. "Industrialized nations, almost universally, have considered power equipment manufacturing capability a matter of national interest." B. Epstein & K.R.U. Mirow, Impact on Developing Countries of Restrictive Business Practices of Transnational Corporations in the Electrical Equipment Industry: A Case Study of Brazil, UNCTAD/ST/MD/9, at 2 (1977).

2. Foreign Industrial Targeting and Its Effects on U.S. Industries Phase II: The European Community and Member States, U.S. International Trade Commission Pub. No. 1517, April 1984, at 209 (emphasis supplied).

3. J. Surrey, Trends in the Procurement of Electricity Generating Plant in Developing Countries, United Nations Conference on Trade and Development, Document TD/B/C.6/AC.9/3, Sept. 6, 1982, at 11 (footnote omitted).

4. U.S. General Accounting Office, International Restraints to Competitiveness of the U.S. Heavy Eelctrical Equipment Industry, Sept. 14, 1983, at 11. See also B. Epstein & K.R.U. Mirow, Impact on Developing Countries of Restrictive Business Practices of Transnational Corporations in the Electrical Equipment Industry: A Case Study of Brazil, UNCTAD/ST/MD/9, at 3 (1977).

5. U.S. General Accounting Office International Restraints to Competitiveness of the U.S. Heavy Electrical Equipment Industry, Sept. 14, 1983, at 11.

6. Id. at 2.

7. J. Surrey & W. Walker, The European Power Plant Industry: Structural Responses to International Market Pressures, Sussex European Research Center, University of Sussex, at 24 (1981)

8. Id.

9. See, e.g., Report on the Effects of the National Security of Imports of Extra High Voltage Power Circuit Breakers and Extra High Voltage Power Transformers and Reactors, 38 Fed. Reg. 14,442 (1973); Foreign Industrial Targeting and Its Effects on U.S. Industries Phase II: The European Community and Member States, U.S. International Trade Commission Pub. No. 1517, April 1984, at 11; The International Electrical Association: A Continuing Cartel, Report prepared by Barbara Epstin and Richard S. Newfarmer for the Committee on Interstate and Foreign Commerce, U.S. House of Representatives, 96th Congress, 2nd Session (Comm. Print 96-AFC 49), June 1980; J. Surrey, Trends in the Procurment of Electricity Generating Plant in Developing Countries, United Nations Conference on Trade and Development, Document TD/B/C.6/AC.9/3, Sept. 6, 1982.

10. Alternating Current Electric Generators for Use With Hydraulic Turbines from Japan, Canadian Anti-dumping Tribunal Inquiry No. ADT-11-79, at 8 (1980).

11. Alternating Current Electric Generators for Use With Hydraulic Turbines from Italy, Canadian Anti-dumping Tribunal Inquiry No. ADT-8-83, at 20 (1983)

12. The International Electrical Association: A Continuing Cartel, Report prepared by Barbara Epstein and Richard S. Newfarmer for the Committee on Interstate and Foreign Commerce, U.S. House of Representatives, 96th Congress, 2nd Session, 41 (1980).

13. J. Surrey, Trends in the Procurment of Electricity Generating Plant in Developing Countries, United Nations Conference on Trade and Development, Document TD/B/C.6/AC.9/3, September 6, 1982, at 23.

14. The International Electrical Association: A Continuing Cartel, Report prepared by Barbara Epstein and Richard S. Newfarmer for the Committee on Interstate and Foreign Commerce, U.S. House of Representatives, 96th Congress, 2nd Session, (1980).

15. Id. at 267

16. Id. at 134

17. Id; accord, J. Surrey, Trends in the Procurement of Electricity Generating Plant in Developing Countries, United Nations Conference on Trade and Development, Document TD/B/C.6/AC.9/3, Sept. 6, 1982, at 11.

18. The International Electrical Association: A Continuing Cartel, Report prepared by Barbara Epstein and Richard S. Newfarmer for the Committee on Interstate and Foreign Commerce, U.S. House of Representatives, 96th Congress, 2nd Session, 136 (1980).

19. Id. at 135

20. The only exception to this rule appears to be Sweden, which will entertain bids from foreign manufacturers.

21. J. Surrey, Trends in the Procurement of Electricity Generating Plant in Developing Countries, United Nations Conference on Trade and Development, Document TD/C.6/AC.9/3, Sept. 6, 1982, at 3.

Mr. PEASE. We will next hear from Mr. Richard Caserta.

Mr. SCHULZE. Mr. Chairman, if you will yield for a second, I would like to have the opportunity to welcome Mr. Caserta. He is a constituent of mine and runs a small manufacturing business in a lovely little town called Red Hill up in Pennsylvania.

He is active in civic affairs and is a very productive member of the community; and we are pleased and honored to have him with us today.

Thank you.

Mr. CASERTA. Thank you.

Mr. PEASE. Thank you, Mr. Schulze.

You may proceed, Mr. Caserta, with that good introduction behind you.

STATEMENT OF RICHARD T. CASERTA, PRESIDENT, RED HILL GRINDING WHEEL CORP.

Mr. CASERTA. Mr. Chairman, as chief executive of a small manufacturing firm, I would like to thank you and the committee for this opportunity to present my viewpoints on trade reform.

My perspective is from the trenches. I have spent 28 years, the last 10 as chief operating officer, with a small innovative successful company supplying a product to large companies and large manufacturing industries.

From this perspective, I have a close-up view of the trade war. Believe me, we are losing the war and we are losing it fast.

I would like to present a few statements from my written statement, but I just want to really summarize some of the major points.

I suggest two changes which would probably benefit those being inundated by imports that are being dumped. I am here really not representing any industry. I am here representing all manufacturing industries.

This country is in a dire crisis. If we don't wake up soon, we are going to lose many of our manufacturing industries and we will never get them back.

I think that in cases of dumping there should be automatically imposed a restriction on the imported product 90 days from the filing of the complaint. The product would be restricted to an import quantity equal to the average monthly shipments over, say, an 18-month period prior to the filing of the complaint.

This way, those industries that are complaining because of the time it takes to get satisfaction would not be injured. Also, this would discourage dumping. Someone is not going to dump if they cannot dump large quantities. Dumping small quantities at a low price is a losing proposition.

Also, right now the burden of proof is on the industries that are being injured. I think the burden of proof that they are not competing unfairly should be on the violating countries or companies.

This way there will probably be a faster resolution of the problem. Because this suggestion probably would expedite those companies that feel they are competing fairly at a low price to present the necessary evidence so that they could ship in material, again at larger volumes.

I would like to point out one example: the flood of Japanese memory chips. I think everybody knows all about it, but I'm not sure everyone is aware that when the last American manufacturer, Intelcorp, announced it was discontinuing manufacture of those items, the Japanese raised the price 75 to 100 percent within 2 months.

You can see what they were trying to do. They were out to wipe out our industry or reduce it to an insignificant competitor and then they were ready to rack up the profits.

There is a general feeling among manufacturers in this country that our Government does not stand up for the rights of our industry while governments such as Japan, West Germany, France, and the other Common Market countries strongly support their industrial bases.

If we are going to maintain a strong industrial base, we need to recognize basic changes in manufacturing and trade, and formulate a fair policy to address these changes. It is important for Congress, the executive branch, and all others engaged in trade negotiations to realize that the old days when manufacturers could offset import competition from countries with low labor costs by using high technology no longer works.

Because of the growth of multinational companies and the insistence of these developing countries that they will only buy the best available technology, we now have very efficient state-of-the-art manufacturing plants in low-wage countries such as South Korea, Taiwan, Brazil, Singapore. This is a combination that we manufacturers cannot beat.

Unless this problem is addressed, we will see more and more high-technology, low-technology, no-technology jobs leave the country and go to these countries as if drawn by a magnet.

A close analysis of today's manufacturing industries would indicate that a large portion of the U.S. manufacturing is directly or indirectly tied to defense spending. This spending is disguising the seriousness of our present trade situation.

Once industries are lost, it is difficult or impossible to resurrect them. After you lose your manufacturing plants, it is only a matter of time until you start losing the engineering and scientific base that support them.

We have opened our markets more than anyone else and other countries have taken unfair advantage of us. I believe we should replace free trade with what I like to call a SOFTtrade policy, which is an anachronism for Semi-Open Free Trade.

It tells our competitors that up to a point you can trade in our marketplace with little or no restriction. Beyond that point, it becomes progressively tougher to compete.

Under such a policy, there would be a level of imports of a given product below which there would be no tariffs. Above that level, the tariff would generally increase so that at some reasonable level it would be a large deterrent to imports.

The tariff could be calculated every 6 months using the average of the previous 12-month period; and as many steps could be built into a policy such as this as necessary depending on the product.

Really, if you look at what has happened in the last few days, there is no question that we need a strong industrial base and we

cannot depend on our trading partners any more than we depended on our allies in the last few days. it is about time that this Congress, this Executive, this country wakes up to this fact and does something about it.

You hear all sorts of words; you hear all sorts of proposals; but, really, what we need is to take the same strong stance on trade that we do when we negotiate with the Russians or anyone else. Believe me, the Japanese when they are negotiating with us are looking out for their interests; the Germans and the Europeans, the same thing.

From out viewpoint out in the trenches, it appears that we are more concerned with offending foreign countries than doing something that is helpful to this country. I really am concerned at the kind of legacy we are passing on to our children and grandchildren.

Right now, if the Defense Department did not have a Buy American policy and bought strictly on free trade, quote, which everyone seems to like, our soldiers would be wearing uniforms made in Korea, boots made in Brazil, carry a rifle made in Israel, probably drive a vehicle made in Japan. That is the truth if you are buying on price.

Now, we have efficient industries. Most of our industries are always trying to stay up to the state of the art.

But unless we realize the basic patterns that have changed, we have to make some long-term trade policy that will assure industry that it will have a market that it can reasonable depend on if it stays modern; and that way you will be able to attract capital investment into industry.

Nobody is going to put large amounts of capital into a industry that they feel is going to go down the drain in 5 years. You have to have some assurances; you have to have a long-term policy.

You need two corrections in trade: a short-term policy to cure immediate ills; a long-term policy to make American industry grow.

I thank everyone for this opportunity. When I first made the approach, I really did not think I would be invited being just a single individual from a small manufacturing firm; but I really do appreciate the opportunity to explain my views.

Mr. PEASE. Thank you very much, Mr. Caserta.

[The prepared statement follows:]

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Abrasive Products

SUMMARY OF COMMENTS

OF

RICHARD T. CASERTA, PRESIDENT

SUBTITLE B IMPORT RELIEF, COUNTERVAILING DUTIES, UNFAIR TRADE PRACTICES

1. Section 201 Reform

It presently takes too long to obtain relief from dumping and unfair competition. I suggest the bills speedup procedures be strengthened by adding two other measures.

1. 90 days after the change is filed an automatic restriction cutting back the imports to approximately the level before the dumping complaint was filed.

2. Put the burden on the dumper to prove they weren't competing unfairly.

These two changes will expedite the investigation and protect our industry from continual damage while the investigation is proceeding.

SUBTITLE C TRADE NEGOTIATING AUTHORITY AND OBJECTIVES

Section 172 - Overall and Principal Trade Negotiating Objectives of the U.S.

The negotiating objectives listed in the bill are too mild. Free trade is a utopia which never will be reached and probably shouldn't be reached.

I would like to propose a modified free trade idea I call S.O.F.T. or Semi Open Free Trade.

Under this proposal level of imports would be set for various classifications below which trade would be relatively free. Above that level, a gradually increasing tariff scale would be in place to discourage excessive imports.

If we are going to continue as an industrial country, it is important to recognize in any trade negotiations, that now the most modern technology is available in all countries, and therefore it almost impossible for U. S. manufacturers to offset low labor costs by using high technology.

Just as the Japanese, German etc. negotiators strongly support their countries industry, our negotiators should strongly support U. S. industry.

COMMENTS OF RICHARD T. CASERTA

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COMPREHENSIVE TRADE POLICY REFORM ACT OF 1986

1. INTRODUCTION

U. S. Manufacturers, are now and for several years, have been suffering from unfair import competition. Unless there are substantial changes in our trade policy we will continue to see our basic and high-tech manufacturing industries decimated. The benign attitude of the U.S. Government toward U. S. manufacturers leaves our manufacturers at a distict disadvantage against those countries that work hand-in-hand with their manufacturing industries, protecting them against imports while helping them export. I believe that although the Comprehensive Trade Policy Reform Act of 1986 does partially address this problem it is not strong enough in some areas. My comments on specific areas follows:

SUBTITLE B IMPORT RELIEF, COUNTERVAILING DUTIES, UNFAIR TRADE PRACTICES

1. Section 201 Reform

Although the changes in this section try to speed up the process in which industries in this country are being damaged in the U. S. market by unfair import practices, the time span to obtain relief is too long to be effective.

I suggest two changes that would probably simplify and expedite the process.

1. Automatically impose a restriction on the imported product 90 days from the filing of the complaint. The product would be restricted to an import quantity equal to the average monthly shipments over the eighteen month period prior to the filing of the complaint.

2. Put the burden of proof that they are not competing unfairly on the violating countries or companies. The first suggestion will catch their attention. It is like stamping on their toes as compared to our present practice of waving a finger at them and saying "naughty, naughty".

The second suggestion puts the burden of proof where it belongs, on the violating countries and companies. These two steps combined will expedite a final determination because the violators will either cease their action or expedite providing all the necessary information needed to prove their case. In the meantime, U. S. businesses and workers will not be harmed by this unfair competition. In the past, countries and companies have taken advantage of our cumbersome and slow process of determining unfair trade to wipe out industries or segments of industries.

A prime example is the flood of Japanese memory chips that wiped out our high production memory chip manufacturing industry. I do not know if you are aware that within two months after our last manufacturer, Intel, announced it was discontinuing manufacture of those items, the Japanese raised their prices 75 to 100%.

SUBTITLE C TRADE NEGOTIATING AUTHORITY AND OBJECTIVES

Sec. 172 - Overall and Principal Trade Negotiating Objectives of the U.S.

Objectives A & B listed are too mild, and will not serve to correct the inequities faced by U. S. manufacturers. I believe "free trade" objective A is a utopia to be avoided. The objectives should be strengthened to indicate we are aware free trade is impossible, and that we will protect our market as much as others protect theirs.

There is a general feeling among manufacturers in this country that our government does not standup for the rights of our industry, while governments such as Japan, West Germany, France and other Common Market countries strongly support their industrial base.

If we are going to maintain a strong industrial base we need to recognize basic changes in manufacturing and trade and formulate a fair policy to address these changes.

It is important for Congress, the Executive branch, and all others engaged in trade negotiations to realize that the old days when manufacturers could offset import competition from countries with low labor cost by using high technology no longer works.

Because of the growth of multinational companies and the insistence of these developing countries that they will only buy the best available technology, we now have very efficient, "state of the art" manufacturing plants in low wage countries such as, S.Korea, Taiwan, Brazil, and Singapore.

This is a combination that we manufacturers cannot beat. Unless this problem is addressed, we will see more and more, high tech, low tech, and no tech jobs leave this country and go to these countries as if drawn by a magnet.

A close analysis of today's manufacturing industries would indicate that a large portion of the U. S. manufacturing is directly or indirectly tied to defense spending. This spending is disguising the seriousness of our present trade situation.

Once industries are lost, it is difficult or impossible to resurect them. After you lose your manufacturing plants, it is only a matter of time till you start losing the engineering and scientific base that supports it. We have opened our markets more than anyone else, and other countries have taken unfair advantage of us. I believe we should replace free trade with what I like to call a S.O.F.T. trade policy. S.O.F.T. is an anacronism for Semi Open Free Trade.

It tells our foreign competitors that up to a point you can trade in our market place with little or no restriction. Beyond that point it will become progressively tougher to compete.

Under a S.O.F.T. trade policy, there would be a level of imports of a given product below which there would be little or no tariffs. Above that level, the tariff would gradually increase so that at some reasonable level, it would be a large deterrent to imports. The tariff would be calculated every six months using the average of the previous 12 month period.

As many steps as necessary could be worked into the system, and the tariff level determined by the formula would be in affect on all of the items imported until the next six month evaluation goes into affect.

This kind of trade policy will have many beneficial effects.

1. It will discourage the multinational companies from moving plants and jobs overseas.
2. It will encourage the investment of capital into industries, because manufacturing operations that stay modern will have reasonable assurance they are not going to be wiped out by imports.
3. It will still allow reasonable levels of import competition.
4. It will encourage the higher priced foreign producers, who many have established a foot hold in our market, to move some of their manufacturing operations to the U. S. to avoid high tariffs that could cause them to lose sales. This also would bring an influx of technology from other countries to the U.S. We all should be willing to learn from others. No country has a lock on technology.
5. This system offers some protection against overvaluation of the dollar.
6. It will reduce our trade deficit, and by increasing manufacturing, our tax deficit.
7. It is a means to assure that foreign competitors are subject to costs that would more or less equal U. S. manufacturers costs for liability insurance, environmental protection, social programs etc.

I'm sure there may be other means of creating a fair trade climate in this country, but it is important that we have a strong policy going into any negotiations.

Many people say that U. S. industry is not modern or efficient. Without having to think very long, here is a list of some industries effected seriously by imports.

1. Machine tool
2. Foundry
3. Steel
4. Auto's (if you didn't have quota's)
5. Ball bearings
6. Textiles
7. Clothing
8. Shoes
9. Large volume microchips
10. Home electronics
11. Television
12. Electronic components
13. Small home appliances
14. Hand tools
15. Farm implements
16. Earth moving equipment
17. Personal computers

Are all these industries inefficient?

I believe U. S. industry on the whole is modern, and can compete as long as the competition is fair.

If we are to remain an industrial power, reduce our trade deficit, we must have a trade law that encourages capital investment, encourages foreign manufacturers to built plants in the U. S. and allows reasonable competition.

Right now, if the Defense Department did not "Buy American" and bought strictly on "Free Trade" our soldiers would be wearing uniforms made in Korea, boots made in Brazil, carry a rifle made in Israel and probably drive a vehicle made in Japan.

Can we really afford to leave a legacy like this to our children and grandchildren?

I'm not an expert on trade regulations, and frankly, I'm not sure what the U. S. can do unilateraly, but something must be done. Past experience has shown we have been unable to do it at the negotiating table. Just as we try to negotiate from a position of strength with the Russians, we should likewise negotiate from strength with our trading partners. This philosophy should be incorporated into this bill.

Also Congress should forcefully urge that the members of any committee negotiating trade matters be hard-nosed individuals who will think of the U. S. manufacturing interests first.

Mr. PEASE. We are delighted that you did seek the opportunity to testify and that you were able to come today. I suspect it may have something to do with the Congressman who represents you, but I am not sure.

Mr. CASERTA. Yes.

Mr. PEASE. He is certainly a well-respected member of this Committee.

I would like to thank all of the members of our panel. I think I will turn to Mr. Schulze first.

Mr. Schulze?

Mr. SCHULZE. Thank you, Mr. Chairman. I know that time is a little short so I will be brief.

I am contemplating an amendment to this bill which, No. 1, would trigger an automatic investigation or perusal if import penetration goes beyond a certain percentage—30 or 35 or 40 percent—whether there is injury or not.

The reason for this is so that we would have some kind of an early warning device. If there is no domestic production, a one-line response saying "The import penetration is 38½ percent, but there is no domestic production and, therefore, there is no potential injury in this area."

Especially the machine tool people, I wonder whether any of you have any thoughts on that approach.

Mr. MACK. Congressman, I think that is a fascinating idea. One thing I would encourage you to have the subcommittee do, if you have not already done it, is to seek a briefing from intelligence sources as to what they believe the danger that is posed by import penetration in certain areas.

We would be the first to agree that one should not be able to come in under the national security statute, for example, and say that you cannot fight a war without paper clips and, because paper clips are threatened, you ought to provide import relief to paper clips. But there are industries—and ours is one of them—that are threatened by imports and the national security is therefore threatened.

Perhaps that might be a criteria that you might use; but I really would encourage you to talk on a classified basis with the intelligence community.

Mr. SCHULZE. That is a good suggestion, Jim; and it is one that I will discuss with the chairman. I think it is a good idea.

What I am getting at is I am not saying it is too late to help you, but if we could have waved some red flags a little bit earlier the situation with machine tools might not have had to go as far as it did.

Mr. MACK. I think some kind of an early warning system might be useful. Frankly, from our perspective: even more useful is if this White House staff, having been alerted to the threat when imports reached a 27-percent level, had enabled the President to take prompt action to curb the threat to the national security instead of delaying the process for over 2 years so that imports have now reached a 45 percent penetration level.

That seems to us to be crazy from a national security standpoint.

Mr. SCHULZE. I totally agree with you on that.

Mr. Caserta, I have also introduced another bill which is called the golden rule trade bill, which calls for bilaterals, mainly to negotiate with each industry or each country a bilateral trade agreement. I call it golden rule because I think that if our doors are open, their doors should be open; if we are using our products in which we have the most competitive advantage and they are doing the same thing, if we cannot compete on a dollar basis and yet their markets are open that is our fault.

We should be competitive.

I think that might go a long way toward solving some of these problems because international trade is not macro, I think it is micro; and each little company and individual sale contributes to that $150 billion trade deficit. It is not something that automatically happens because of one or two big sales.

I wonder if you had any thought on the golden rule or bilateral approach.

Mr. CASERTA. Well, I think the bilateral approach surely does work in many instances. The only problem is that it can be circumvented too easily. There have been instances, of course, like I just read recently, where the Japanese, when they lost their monetary advantage in the yen, when it dropped down from 240, 250 down to 180 or so, they find they are not competitive in some fields.

So I read where some of the manufacturers of appliances are going to move them to countries such as Taiwan, Singapore, and others where those currencies are more or less tied to ours and have not changed relative to ours so they can still ship them in.

Now, this is the sort of situation that can be used to get around this; and, frankly, we are sitting here really with popguns fighting foreign trade while the other countries have cannons. I don't think it is an equal battle and I don't like it.

Mr. SCHULZE. Fine. Thank you, gentlemen.

Thank you, Mr. Chairman.

Mr. PEASE. Thank you, Mr. Schulze.

Mr. Guarini, did you have some questions?

Mr. GUARINI. I certainly want to agree with Mr. Mack that this machine tool instance is an outstanding case where the process is not working as it should and something should be done to make it step up.

Twenty-six months is too long. It is an unbearable length of time for an industry to wait for an answer one way or the other.

Mr. MACK. Now, that is after a year-long investigation by the Commerce Department, which is provided under the statute. We have no quarrel with that.

Mr. GUARINI. What do you feel should be the length of time? The bill says 60 days as proposed, but that sounds like a short period of time, also.

Mr. MACK. Well, Congressman, as a practical matter I believe that the 60-day deadline is a reasonable period of time because the national security is, by definition, involved.

This is not 60 days for every case. It is 60 days after the Secretary of Commerce, in consultation with other Cabinet officers and the intelligence community who have responsibility for providing for mobilization, makes a determination that the national security is threatened and then sends it on to the President.

The Secretary of Commerce is not an independent operator. He is a part of the President's Cabinet. The Secretary of Defense is not an independent operator. He is a part of the President's Cabinet.

So that it seems to us that 60 days is not an unreasonable deadline after the President has received a recommendation from his Secretary of Commerce and his Defense agencies that the national security is threatened and that, therefore, some action needs to be taken to remedy the situation.

As a practical matter, what is likely to occur is that some of the White House staff personnel are likely to be more involved in the process prior to the 1-year deadline; instead of waiting to see what the Secretary of Commerce tells them and then going back, as occurred in our case, and trying to undo and redo the scenario and the assumptions because they did not like the answer they got from the Secretary of Commerce.

Mr. GUARINI. When it comes to national security, I think that it could be recognized that many of the things we are talking about in these trade bills to make us more competitive and keep our shipyards open, our automobile plants open, our steel plants open, et cetera, goes to the essence of our war potential.

If we did not have shipyards back in World War II, we would not have had delivery ships that gave us the potential to carry our troops and goods to foreign places.

It seems to me that the definition of the administration of national security is a very narrow one. We should recognize the fact that heavy industries, smoke-stack industries and certainly many other facets should be considered when we are approaching trade laws.

I sympathize with your particular situation, which is one facet, but I just wish the administration, when they had the $300 million national defense budget, would realize that it is so critical to the future welfare of our country that we do something to keep open our heavy industries.

Mr. MACK. Without the machine tool industry, you would not have the ships in the shipyards.

Mr. GUARINI. That is right.

Mr. MACK. You need machine tools to make all those.

Mr. GUARINI. It takes many parts to make a country.

Mr. MACK. You bet.

Mr. GUARINI. Thank you.

Mr. PEASE. Mr. Frenzel?

Mr. FRENZEL. I have no questions. Thank you.

Mr. PEASE. Let me mention just a couple of things. I will not delay the hearing much longer either.

Mr. Mack, in regard to your testimony, I would just say that I think it is absolutely outrageous that the administration has sat on the machine tool industry's petition as long as it has.

What do they tell you right now?

Mr. MACK. We understand that Secretary Baldrige had the opportunity to present the case to the President about 3 weeks ago. We understand that he was supported in that presentation by the Department of Defense, the Joint Chief, and the intelligence community.

There were others who opposed taking any action.

The matter now has to be decided by the President. Ambassador Yeutter has borne the brunt of questions by members of this committee, because he is the one who comes before you most often. I think every time he comes up here, one of you has asked him, "When are you going to do something about machine tools?" He has been, I think, a very constructive force in trying to move this process along and get an answer. He indicated to you last week that he expected that a decision would be announced in a matter of days. We are looking forward to that, and when it occurs we will have some further comment.

The whole process is, as it should be, classified. The national security is involved and the matters discussed are sensitive. We have no quarrel with that.

Mr. PEASE. Mr. Caserta, I was pleased with your testimony, particularly when you talked about having more strict punishment for those who are found guilty of dumping, as a way of discouraging people from dumping in the future.

I have had some conversations with American business people and, frankly, lawyers who advise Japanese companies who are exporting into the United States market. They tell me that it is strictly a business decision: that there are no ethical considerations involved, is it right or wrong to dump.

If they think they can make money by dumping and factoring into the equation the possible penalties, then they go ahead and do it. I have been advocating over the last few days, as other witnesses have testified, that we ought to have some escalating penalty for dumping so that we not only punish the past dumping practice, but discourage people from trying it again, from dumping again.

I gather that that is the sort of approach that you are urging upon this subcommittee. Is that correct?

Mr. CASERTA. Yes. I agree, we should, but we also must have fast action. Whatever is done should be put on very soon after the complaint so that the person is discouraged rather than waiting 1½ years or 2 years down the line to, then, put it on retroactively.

The industry has folded by then. Many of the manufacturers cannot be benefited by what is being done then. You have let them reduce the competitiveness of our industry while you are investigating the charges.

Look at what has happened in the machine tool industry since they started. Look at how large a share of the market has been taken by imports.

Now, even if something is found out, damage has already occurred. What has to happen is put it on soon after a complaint is filed, whatever you are going to do, whether it be a restriction in the quantities being brought in, whether it be some other kind of penalties; put them on right away.

In fact, if you lost it, if it was some kind of monetary penalty, you could rebate it to them at a later time; but let's put it on right now so that they don't have that competitive edge while the investigation is going on.

Mr. FALK. I think what the committee should also bear in mind is not just after the complaint has been filed, but for many types of products—certainly products in our industry—it is the time it takes to prepare a complaint. To obtain home-market prices is not

always the easiest thing, and then home-market prices on comparable products.

A 50-cycle motor is different than a 60-cycle motor and to get the technical expertise to make this evaluation and prepare a case that is technologically sound has taken us, in the instance of the transformers and electric motors, something on the order of a year or two before the complaint is even filed.

So you are talking about a time period which is quite critical.

Mr. MACK. Let me go back even prior to the time that you start preparing a complaint.

Characteristically, the kind of problem that our members have run up against is where you have a pattern of activities, any one of which, standing alone, is probably OK or may be OK. But those activities are aimed at getting that infant industry in a foreign country geared up and ready to come in and compete in the U.S. market. By the time that infant industry has grown into King Kong, the subsidies—the illegal or illicit or unfair activities—targeting, if you will—have probably for the most part ceased and they are now off building a new King Kong in some other area.

In the meantime, the U.S. firm is now over here competing with King Kong. If you say, "We will get them to stop their targeting. We will get them to stop their illegal or unfair subsidies," they will come back and say, "Well, we have already done that. Of course, we are now creating a new King Kong to come to the United States and create another problem for somebody else."

It seems to us that in the early warning system that Mr. Schulze was addressing earlier, you might want to focus on those kinds of activities at their incipient stage in countries that have had a pattern of engaging in them. You might wish to try to negotiate to get them to stop. But as Mr. Caserta has suggested, when King Kong arrives on the shores of the United States, you ought to consider providing some sort of compensation for the companies and the workers who King Kong destroys when he gets here.

Mr. PEASE. Thank you very much.

If there are no more questions, I would like to thank all of our panelists. It has been an excellent panel. We appreciate your testimony very much.

The committee will now stand in recess until 2 p.m.

Mr. FRENZEL. Mr. Chairman?

Mr. PEASE. Yes, Mr. Frenzel.

Mr. FRENZEL. The Republicans are going to have a caucus at 1. I don't know when that caucus will adjourn, but we will be ending the general debate on Nicaragua pretty quick, I think. We are likely to be into things.

I wonder if it's possible to proceed to the next witnesses. At least, could we proceed until 1 or does the gentleman have an important appointment?

Mr. PEASE. Is Mr. Vanik in the room?

[No response.]

Mr. FRENZEL. If he is not, could we do the next panel?

Mr. PEASE. Are Wayne Gable and Doreen Brown in the room?

All right. We will proceed and do that.

To accommodate the minority members of the subcommittee, we will continue and hear two more witnesses. I think the committee will reassemble later on to hear Mr. Vanik.

We will hear first from whoever the representative is of the Citizens for a Sound Economy.

STATEMENT OF RICHARD E. WILBOURN, POLICY ANALYST, CITIZENS FOR A SOUND ECONOMY

Mr. WILBOURN. My name is Richard Wilbourn. I represent Citizens for a Sound Economy. Mr. Gable expresses his regrets for not being able to be here.

Mr. PEASE. That is fine, Mr. Wilbourn. You may proceed with your testimony. The full testimony of both of you will be inserted in the record so I will appreciate brevity.

Mr. WILBOURN. Thank you.

Thank you for this opportunity to testify on omnibus trade legislation. I represent Citizens for a Sound Economy, a 250,000-member grassroots citizens organization dedicated to expanding consumer choice and economic opportunity.

CSE believes that the trade issue is one of the biggest consumer issues on the congressional agenda. Few other issues before Congress share the trade issue's potential for affecting consumer prices and long-term national economic prosperity.

Citizens for a Sound Economy opposes protectionist measures which consistently increase consumer costs and fail to make industries competitive. In fact, as the 44 years of combined protectionism for the textile and steel industries indicate, protectionism only slows beneficial economic transition responsible for moving America away from less technologically intensive industries and skills toward more sophisticated industries and higher paying employment.

Protectionism also stymies the transition to greater efficiency often forcing protected industries to return to the Federal Government time and again for more protection.

Protectionism is a trade policy which creates an industrial sector that cannot stand on its own feet. Clearly this is no indicator of a healthy economy or of a prosperous future.

Mr. FRENZEL. Mr. Chairman?

Mr. PEASE. Mr. Frenzel?

Mr. FRENZEL. Might I interrupt?

The members of this subcommittee are on a very short leash. The gentleman is reading excellent testimony into the record, but I note that there are 15 pages of it.

Mr.WILBOURN. Yes, sir; my remarks are abbreviated and will be limited to the 5 minutes allotted to me.

Mr. FRENZEL. Thank you very much.

Mr. WILBOURN. Thank you, Mr. Frenzel.

Mr. PEASE. Mr. Wilbourn, you may proceed.

Mr. WILBOURN. Thank you.

My oral remarks today will be directed to the antitrust and presidential authority transfer of USTR provisions of the draft omnibus trade bill. I also will make several trade policy recommendations

not found in the omnibus trade bill draft that CSE believes should be there.

A section of the draft omnibus trade bill which CSE feels very strongly about is section 209 dealing with antitrust policy as a trade remedy. This provision, which allows for a specific antitrust exemption on a particular merger or acquisition, exhibits an understanding of the international competitiveness of modern world markets.

Adding this new trade relief, or remedy, would permit domestic corporate realignment to meet and beat foreign corporate challenges. Economists agree that with U.S. companies no longer isolated from foreign competitors, U.S. antitrust laws are outdated.

Today multi-billion-dollar foreign companies abound and regularly challenge U.S. firms and markets that once were the sole domain of domestic producers. Congress' goal of ensuring fair international competition would be furthered if antitrust laws were amended in circumstances of import competition.

Their present form not only disallows certain mergers, it is so vague as to open the door to harassment from foreign as well as domestic competitors and the political establishment.

A second proposal found in draft omnibus trade legislation of which CSE questions the value is the shift in trade relief decision-making authority from the President to the Office of the U.S. Trade Representative. The USTR is in no way positioned to make decisions which often have a direct bearing on foreign relations, consumer well being, long-term economic prosperity and national security.

These are issues traditionally dealt with by the Executive.

While it is difficult to predict precisely how this transfer would affect the USTR, granting it such significant powers separate from the President undermines the philosophy behind the creation of the USTR. Of course, if, in fact, this shift in authority turns out to be only cosmetic, as some have suggested that it will, then the transfer reveals itself as unnecessary and imprudent.

In addition to those sections found in the draft proposal of the omnibus trade bill, CSE is aware of at least two export opportunities which could be incorporated into the omnibus trade bill that are not there. They are removing both the export ban on oil from Alaska's North Slope and the manufacturing and export ban on pharmaceuticals not approved by the FDA, but approved by responsible agencies in foreign countries.

The removal of the ban against exporting North Slope Alaskan oil could immediately reduce the Japanese/American bilateral trade imbalance by $3 million. This amount could increase significantly as natural gas exports were initiated.

Japanese Prime Minister Nakasone has consistently repeated his country's desire to buy Alaskan oil and natural gas. CSE believes there are several positive features to this idea.

For one, transportation costs for the 800 million barrels of oil per day shipped from Alaska to the east coast are 800 percent more expensive than oil shipped directly to Japan. The current ban creates the ridiculous situation of tankers traveling nearly the same route with the same cargoes, but in opposite directions.

Other features offered by an open export policy include the stabilization of Alaska's economy and the U.S. domestic oil industry, improvement in Mexico's debt situation since most of the exported Alaskan oil no longer supplying the continental United States would be replaced with imported Mexican oil, increased Federal revenues, and greater American energy independence through increased domestic oil production.

Another policy change not mentioned in the draft omnibus trade bill, but possessing significant potential for increased U.S. exports is removal of the ban prohibiting manufacture and export of drugs approved by foreign regulatory agencies but not by the FDA. Repeal of this export restriction would increase U.S. export income by an estimated $500 million and create an estimated 10,000 jobs.

Foreign pharmaceutical competitors in England, Japan, Switzerland, France, and West Germany are not faced with these restrictions and are able to compete in areas closed to American companies. In response, some American companies have actually constructed production facilities abroad, removing productive export employment from the United States. American Cyanamid is one such company that spent $11 million to build a factory in Great Britain.

If Congress is truly serious about improving America's competitive position and increasing exports, removing the pharmaceutical export ban on drugs should be a top priority.

Yet another way Congress could act to reduce the trade deficit is by cutting spending. Large budget deficits have led to huge inflows of money into the country. This money, which originally went overseas to purchase imports, would normally come back as exports were purchased or as jobcreating direct investments were made in the United States.

Because of uncontrolled Federal spending, foreigners are finding it more profitable to invest in Government debt. Therefore, instead of using the money on the productive sector of the economy, U.S. dollars flowing overseas are returning to finance massive Government spending.

With the world economy rebounding, a spate of protectionism would be a step in the wrong direction. The administration is engaged in sensitive high-level negotiations designed to reduce trade barriers in Japan and the rest of the world.

Hasty passage of omnibus legislation with its many provisions possessing a significant potential for closing U.S. markets might jeopardize chances for progress. CSE urges Congress to resist any anticonsumer portions of omnibus trade legislation.

Instead, Congress should fully back efforts to expand trade and open world markets for American industry. Thank you.

Mr. PEASE. Thank you very much, Mr. Wilbourn.

[The prepared statement follows:]

TESTIMONY ON

OMNIBUS TRADE LEGISLATION

BY

RICHARD E. WILBOURN

CITIZENS FOR A SOUND ECONOMY

Mr. Chairman and members of the Committee, thank you for this opportunity to testify on omnibus trade legislation. I represent Citizens for a Sound Economy, a 250,000 member grassroots citizens organization dedicated to expanding consumer choice and economic opportunity. CSE believes that the trade issue is one of the biggest consumer issues on the congressional agenda. Few other issues before Congress share the trade issue's potential for affecting consumer prices and long-term national economic prosperity as does the trade issue. Citizens for a Sound Economy opposes protectionist measures which consistently increase consumer costs and fail to make industries competitive. In fact, as the forty-four years of combined protectionism for the textile and steel industries indicate, protectionism only slows beneficial economic transition responsible for moving America away from less technologically intensive industries and skills toward more sophisticated industries and higher paying employment. Protectionism also stymies the transition to greater efficiency, often forcing protected industries to return to the federal government time and again for more protection. Protectionism is a trade policy which creates an industrial sector that cannot stand on its own feet; clearly this is no indicator of a healthy economy or of a prosperous future.

My remarks today will be directed to the telecommunications, antitrust, Presidential authority transfer to the USTR, and Trade Adjustment Assistance portions of the draft omnibus trade bill. I also will make several trade policy recommendations not found

in the draft that CSE believes should be there.

The telecommunications portion of the draft omnibus trade bill boasts a commendable objective, the removal of foreign trade barriers. CSE sympathizes with exporters who may be suffering because of protectionist measures in other nations. Trade barriers are an unjust form of wealth redistribution, and their existence is a threat to global cooperation and international security. We strongly commend Congress and other interested parties for their efforts designed to eliminate restrictions on international trade.

If the telecommunications portion of the draft omnibus bill was limited to the goals of reducing and eliminating worldwide protectionism, CSE would be strongly favorable to it. Indeed, consumers around the world would be the beneficiaries of such steps, and we do hope that the legitimate trade expansion elements of this provision become a permanent part of U.S. trade policy. Unfortunately, the telecommunications provisions does not have, as its primary purpose, reducing trade barriers. It is a thinly veiled attempt to impose protectionism on the American consumer.

It does not explicitly dictate specific protectionist measures, but it does call for action unless any "imbalance is corrected through the achievement of fair and equitable market opportunities for United States telecommunications products and services in foreign markets[.]" Quoting again from section 122(a)(6), the bill calls for ending "continued open access to

the telecommunications products and services of such foreign countries in the United States market." It does not take a vivid imagination to predict how this legislation would be used by uncompetitive domestic producers.

Under sec. 124(a)(1) and sec. 124 (b)(2), private producers would be able to file petitions claiming that "acts, policies, and practices in a foreign market deny fair and equitable foreign market opportunities." Regardless of actual circumstances, this will allow any domestic company to thwart market forces by using the threat of protectionism. Since it is not known what constitutes unfair "acts, policies, and practices," there is little reason to doubt political pull will determine what decisions are made. Depending on the orientation of the United States Trade Representative (USTR), this provision could amount to anything from a Pandora's box to a meaningless charade.

Naturally, with such wide parameters, one of the primary effects of the telecommunication section will be to increase uncertainty in markets. International trade is a difficult business. The addition of protectionist threats exerts a suffocating influence, and consumers will be the ones to suffer. The spectre of retaliation will only serve to make any concrete actions self-defeating.

The hazy language in the bill makes it difficult to make specific criticisms. The damaging parts will only become clear if "Authorized Actions" are taken. In such instances, the results will be higher prices and reduced competition for

American consumers. CSE strongly feels the best way to avoid the negative parts of the telecommunications section is to reject it. Any good intentions incorporated into the bill will fall victim to special-interest selfishness after it becomes law.

A realistic appraisal of the bill indicates that its major purpose is to restrict Japanese imports. Many of the American corporate interests supporting this legislation are not terribly concerned with expanding into the Japanese domestic market. What worries a portion of the American telecommunications industry is Japanese entry into the American market. Pressured by competition, domestic producers would restrict consumer freedom of choice by using the telecommunications provision of the draft omnitus trade bill as an excuse to slap protectionist trade barriers against Japanese products. The question at hand is whether the benefits of free trade will be sacrificed in order to protect the domestic telecommunications industry.

Ironically, the Japanese have one of the most open markets for telecommunications products in the world. Just recently the Japanese Diet passed legislation privatizing NTT, the government owned communications monopoly. Furthermore, since Japan imposes no tariffs on telecommunications equipment, the market in Japan is second only to the United States in openness. It would indeed e tragic if short-sighted protectionism on our part induced the Japanese to end their commitment to an open telecommunications market.

The willingness of the Japanese government to permit

American participation was shown during the finalization of the NTT privatization legislation. United States government and industry representatives were allowed to have input in several key areas (something impossible to imagine happening for American legislation). Some of the notable changes included the registration of common carriers, methods for equipment testing and approval, United States industry input for rules and standards development, and protection against cross-subsidization from remaining monopolistic sectors of NTT. An industry representative to the United States negotiating team stated there was general "reciprocity of access at a market level."

Since the U.S.-Japan agreement on NTT procurement was reached U.S. sales of telecommunications equipment have soared 126 percent. While this has not meant the U.S. share of the Japanese market approaches the Japanese share of the U.S. market, it does indicate the ability of U.S. firms to export. The trade imbalance is not a result of Japanese trade restrictions.

There are unique difficulties facing U.S. firms trying to enter the Japanese markets. Japanese companies place great stock in long-term relationships. Any newcomer, Japanese or American, faces obstacles to markets. Japanese consumers are very cautious when it comes to purchasing new products. If new products are accompanied by imprecise or inappropriate directions, as is often the case because of language barriers, gaining new markets is even more difficult.

An indicator of the hardships any newcomers face in Japan is

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that the nation has a bankruptcy rate historically six times higher than in the United States. Furthermore, the lack of sophisticated distribution and service networks create a self-imposed barrier for U.S. firms. Increased marketing efforts on the part of American companies would be a better way to solve the trade deficit than protectionism.

U.S. firms need to be willing to customize their products for Japanese consumers. Adequate sales staff and support personnel are needed to build a customer base. The notable lack of sales personnel indicates the true nature of this debate. In hearings held by the Subcommittee on Telecommunications, Consumer Protection, and Finance of the House Energy and Commerce Committee, Chairman Timothy Wirth noted that only one U.S. company had more than two sales personnel in their Tokyo offices. Another indication of U.S. companies' lack of competitive interest is that only 26 percent of NTT proposals get a response from an American company. Although few in number, over 50 percent of U.S. bids have been accepted.

The paradoxical aspect of these proposed trade barriers is that they come just as U.S. efforts to enter the Japanese market are beginning to pay off. Former U.S. Under Secretary of Commerce Olmer has said, "It would be wrong now to go out and pass drastically protectionist legislation after the Japanese government has done everything we've asked them to do." U.S. exporters who have invested in long term trading relationships will have wasted substantial time and money.

Statistics provide evidence that protectionism will backfire on the American economy. For instance, the U.S. telecommunications industry accounts for 32 percent of worldwide shipments. U.S. technological leadership is reflected in figures showing five times as many royalty payments enter the country as leave the country. The two top firms in the world are American producers. In a recent four year period (1979-1983), the number of companies selling telecommunications products jumped from 380 to 550.

In that same period of time, U.S. exports increased by 39.5 percent to $17.8 billion. Because of deregulation, the International Trade Commission (ITC) predicts substantial growth in the domestic market. The ITC predicts an increase of 132 percent in the decade from 1983 to 1993 with telecommunications accounting for $41.3 billion in sales in 1993. Annual growth for domestic producers is expected to average nearly 8 percent during this period.

Despite the emotional rhetoric emanating from anti-trade elements, there are serious reservations whether imports pose any problem at all. As of 1983 imports accounted for only 11 percent of the domestic market in telecommunications. This is lower than the overall average of 15 percent. Furthermore, the claim that U.S. jobs are at stake seems spurious at best. Protectionism may temporarily save some jobs in a few industries, but other industries suffer. The network of equipment suppliers, numbering over 2000 small and medium sized businesses, would be placed in

jeopardy if imports were curtailed. In testimony last year, a spokesman for the industry, which employs over 100,000 people, feared restrictions would decimate the industry.

Protectionism will cost American businesses dearly. Manufacturers who use telecommunications components in their products would face steeper prices if Japanese producers were barred from the market. Ironically, this will decrease American competitiveness in overseas markets. Naturally, consumers will bear the brunt of the burden in higher prices.

Another section of the draft omnibus trade bill which CSE feels very strongly about is sec. 209 dealing with antitrust policy as a trade remedy. This provision which allows for a specific antitrust exemption on a particular merger or acquisition exhibits an understanding of the international competitiveness of modern world markets. Adding this new trade relief remedy would permit domestic corporate realignment to meet and beat foreign corporate challenges. Economists agree that with U.S. companies no longer isolated from foreign competitors when major revisions in Section 7 of the Clayton Act were last adopted in the first half of this century, US antitrust laws are outdated. Today multi-billion dollar foreign companies abound and regularly challenge U.S. firms in markets that once were the sole domain of domestic producers.

Congress' goal of insuring fair international competition would be furthered if antitrust laws were amended in circumstances of import competition. Their present form not only

disallows certain mergers, it is so vague as to open the door to harassment from foreign as well as domestic competitors and the political establishment.

The antitrust relief offered in sec. 209 of the draft omnibus bill by no means represents a relinquishing of U.S. antitrust policy. If anything, it fails to go far enough. The antitrust exemption provided for in this proposal would only be available to industries that have proven import injury to the ITC and are recommended antitrust relief by the executive branch. Even then the relief granted can be for only a specific merger or acquisition restricted to members of a single industry and must take place in a limited period of time or the exemption becomes invalid. Even with the exemption, the merger can still be challenged in court, which itself is a discouragement to expansion even when the growth is economically efficient, and can be voided if a court determines the existence of "significant probability that such merger or acquisition will substantially increase the ability of the resulting firm profitably to maintain prices above competitive levels for a significant time period."

Notwithstanding, Citizens for a Sound Economy views this portion of the omnibus trade package as a positive and significant step toward enabling American industry to confront the rigors of international competition.

A second proposal found in draft omnibus trade legislation of which CSE questions the value is a shift in trade relief decision making authority from the President to the office of the

United States Trade Representative. The USTR is in no way positioned to make decisions which often have a direct bearing on foreign relations, consumer well-being, long term economic prosperity, and national security. These are issues traditionally dealt with by the executive who is best positioned with resources and advisors to handle questions of national and international importance affecting a broad array of businesses, workers, and consumers. While it is difficult to predict precisely how this transfer would affect the USTR, granting it such significant powers separate from the President undermines the philosophy behind the creation of the USTR. Of course if in fact this shift in authority turns out to be only cosmetic, as some have suggested it will, then the transfer reveals itself as unnecessary and imprudent.

In connection with CSE's reservations over the transfer of authority from the President to the USTR, CSE notes that under the draft proposal, not all authority being shifted from the President would go to the USTR. Instead, if a form of trade relief were chosen by the executive branch differing from that recommended by the International Trade Commission, Congress could force the USTR to accept the ITC recommendation by joint resolution. This is a significant tipping of the scales toward the legislative branch as maker of trade policy. It is a move which could politicize trade policy to such a degree as to denigrate it into a brawl of interest groups pitted against one another. While CSE values Congress' input into U.S.

international trade policy and respects its differences with the Administration's approach, we doubt that this particular change is truly in the best interests of our nation.

CSE also opposes the extension of the trade adjustment assistance program. There is no economic rationale why workers in one industry harmed by imports should benefit with displacement payments while those in another industry suffering from a general decline in demand should not. CSE finds equally objectional this program's source of funding. Auctioned quotas and tariffs are every bit as harmful to consumers as unauctioned quotas. They restrict supply, increase prices, and limit consumer choice. The fact that auctioned quotas and tariffs raise revenues which may be used for trade adjustment assistance or other government spending programs in no way translates as an improvement to consumer welfare.

In addition to those sections found in the draft proposal of the omnibus trade bill, CSE is aware of at least two export opportunities which could be incorporated into the omnibus trade bill that are not. They are removing both the export ban on oil from Alaska's North Slope and the manufacturing and export ban on pharmaceudicals not approved by the FDA but approved by responsible agencies in foreign countries.

The removal of the ban against exporting North Slope Alaskan oil could <u>immediately</u> reduce the Japanese/American bilateral trade imbalance by $3 billion. This amount could increase significantly as natural gas exports were initiated. Japanese

Prime Minister Nakasone has consistently repeated his country's desire to buy Alaskan oil and natural gas. CSE believes there are several positive features of this idea. For one, transportation costs for the 800 million barrels of oil per day shipped from Alaska to the East Coast are 800% more expensive than for oil shipped directly to Japan. The current ban creates the ridiculous situation of tankers traveling nearly the same routes with the same cargoes but in opposite directions. Other features offered by an open export policy include: the stabilization of Alaska's economy and the US domestic oil industry, improvement in Mexico's debt situation since most of the exported Alaskan oil no longer supplying the continental U.S. would be replaced with imported Mexican oil, increased federal tax revenues, and greater American energy independence through increased domestic oil production.

Another policy change not mentioned in the draft omnibus trade bill but possessing significant potential for increased U.S. exports is the removal of the ban prohibiting manufacture and export of drugs approved by foreign regulatory agencies, but not by the FDA. Repeal of this export restriction would increase U.S. export income by an estimated $500 million and create an estimated 10,000 jobs. Foreign pharmaceutical competitors in England, Japan, Switzerland, France, and West Germany are not faced with these restrictions and are able to compete in areas closed to American companies. In response, some American companies have constructed production facilities abroad removing

productive export employment from the U.S. American Cyanamid is one such company that spent $11 million to build a factory in Great Britain. If Congress is truly serious about improving America's competitive position and increasing exports, removing the pharmaceutical export ban on drugs should be top priority.

One of the best ways Congress could act to reduce the trade deficit is by cutting spending. Large budget deficits have led to huge inflows of money into the country. This money, which originally went overseas to purchase imports, would normally come back as exports were purchased or as job creating, direct investments were made in the U.S. Unfortunately, because of uncontrolled spending, foreigners are finding it more profitable to invest in government debt. Therefore, instead of using the money on the productive sector of the economy, U.S. dollars flowing overseas are returning to finance profligate government spending.

Not only are these dollars buying government debt instead of privately produced goods, but the huge demand for dollars to buy debt has bid up the value of the dollar which even today is nearly 30% (28.8%) higher than six years ago. This high value of the dollar, more than anything else, is responsible for the trade deficit. The Council of Economic Advisors (CEA), in its 1985 Annual Report, estimated $60-$70 billion out of the $85 billion increase in our merchandise trade deficit since 1980 was caused by the high price of the dollar. The Congressional Budget Office (CBO) found that the overvalued dollar was responsible for 87 percent of the increase in the trade deficit.

The numbers are not difficult to see. The dollars used to buy imports do not go overseas and disappear. They are only valuable because other countries can either exchange them, buy U.S. exports, invest in U.S. debt, or invest in the U.S. private sector. Eliminating the government debt option would free up an incredible source of funds that could then be used to reduce the trade deficit. Regardless of which remaining option was chosen, the American economy would be the winner.

Another factor Congress should consider is that trade deficits are not a sign of economic weakness. They merely represent one particular accounting method for determining international trade. The investments made by overseas holders of dollars in the U.S. economy are an indication of economic vitality, yet they do not show up in balance of trade calculations. The economic growth the United States is experiencing has made our nation an attractive investment for citizens of other countries. This investment is an unquestionably necessary component for economic growth and jobs creation. If 100 percent of our trade deficit was attributable to foreign investment in the United States it would be wrong to even talk about a trade problem.

With the world economy rebounding, a spate of protectionism would be a step in the wrong direction. The administration is engaged in sensitive high level negotiations designed to reduce trade barriers in Japan and the rest of the world. Hasty passage of this legislation with its significant potential for closing U.S. markets might jeopardize chances for progress. CSE urges Congress to resist anti-consumer portions of omnibus trade legislation. Instead, Congress should fully back efforts to expand trade and open world markets for American industry.

/C/S/E/
CITIZENS FOR A SOUND ECONOMY

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CAPITOL COMMENT

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HOW TO INCREASE EXPORTS: LESSON ONE--MAKE THEM LEGAL

Despite complaints in Congress over the negative balance of trade between the United States and Japan, policymakers continue to ignore one of the greatest opportunities available for boosting U.S. exports to Japan. That neglected opportunity is the potential $20 billion the U.S. could reap annually from selling oil and natural gas from Alaska's North Slope to the Japanese. This simple step could increase American exports to Japan by at least that amount annually in the long run. The U.S. could gain at least $8 billion in increased sales to Japan in 1986 if obstacles to such sales were removed today. Moreover, the market for such sales is proven -- Japanese Prime Minister Yasuhiro Nakasone has consistently repeated his country's desire to buy Alaskan oil and natural gas.

While President Reagan has announced plans to permit export of an estimated 5000 to 6000 barrels of oil per day produced in southern Alaska's Cook Inlet, this barely scratches the surface of Alaska's 1.8 million barrel per day oil production total. The bulk of Alaska's oil must be processed in American refineries located almost exclusively in the lower forty-eight states. West Coast refineries handle one million barrels per day of this oil, but the balance is shipped through Panama to the Gulf and East Coasts at a cost of $4 to $5 per barrel. This cost compares with a transportation fee of $1.60 per barrel for oil shipped from Saudi Arabia to any port in the United States. Furthermore, it is a common irony for oil tankers from Alaska steaming for Houston or Savannah to pass Venezuelan or Mexican tankers sailing for Japan. Industry experts estimate that this wasteful crisscrossing of tanker routes costs consumers $1.09 per barrel or nearly $320 million per year.

A by-product of Alaskan oil well discoveries is the discovery of huge natural gas reserves. The American Gas Association claims that 26 trillion cubic feet (tcf) of proven gas reserves are available in the North Slope area. Presently there is no way to transport this valuable resource to the lower forty-eight states. Building a Trans-Canada pipeline as has been suggested would force producers to charge six times the current price to make a profit. Consequently, this gas is either pumped back into the wells, a process that consumes and loses about one third of the gas and adversely affects long term oil production, or is burned off. Natural gas is another product the Japanese would buy if American firms were free to sell it. Gas exports of one tcf would earn about $5 billion per year and would provide Japan with an alternative to oil, thus pressuring downward world oil prices. There is no reason to hinder sales of this natural gas to the Japanese, since the gas is not being consumed by anyone, and indeed is often wasted.

Lifting the North Slope Alaskan oil export ban would have several long term effects. First, while West Coast oil prices may rise during a short adjustment period, in the long run fuel prices will fall nationwide as world supplies adjust, thus benefiting consumers. Along with increased consumer benefit,

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increasing Alaskan oil and natural gas exports would result in a huge windfall through higher federal tax revenues. For oil, 90% of wellhead price increases created by greater demand would be collected in taxes. The federal government can expect to receive $620 million in the first year of North Slope oil exports. This amount could easily double with the onset of natural gas production and as oil production expanded.

Opening up the export channels for North Slope oil would also increase American national security. Increased demand for Alaskan oil would soon encourage expanded production capacity. And while some of the exported Alaskan oil would have to be replaced with imports from other places, these imports would probably not come from OPEC. Mexico, a nation which is staggering under a heavy American debt, is the largest oil exporter to the U.S. Mexico's need for dollars and the close proximity of its oil fields to U.S. Gulf and East Coast refineries means much of America's Alaskan oil replacements would come from there. The rest will be "surplus oil" freed up by Japanese demand diverted away from OPEC oil. On net, United States oil imports would at least remain the same, but in fact would probably decrease as Alaskan production expanded.

However, there are groups which would lose benefits through allowing Alaskan oil exports. Owners of oil tankers with United States registry enjoy a monopoly, granted by the Jones Act, on shipments between American ports. This monopoly enables them to ship Alaskan oil cargos at two to three and a half times the internationally competitive rate, and to ship it distances that are not economically justifiable. Included in this special interest constituency are oil companies which own their own tankers.

U.S. maritime unions, another special interest constituency, predict that many of their members' jobs will be lost as a result of lifting the export ban. However, the average salary for a second mate on a U.S. flag ship is over $60,000 for a six month tour. Masters earn $120,000 for the same tour. It is quite likely that inflated U.S. maritime salaries will be the victim of exported Alaskan oil, while the absolute number of jobs created in the oil and maritime industry together will actually increase.

The current ban on exporting North Slope Alaskan oil is supported by special interest groups at the expense of America's economic prosperity and national security. Opening up the channels of trade would directly increase U.S. exports to Japan, improve U.S. ties to Mexico, strengthen the West's energy resource independence, and help reduce America's budget deficit.

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CITIZENS FOR A SOUND ECONOMY

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SON OF SMOOT-HAWLEY: HOOVER-ERA PROTECTIONISM RIDES AGAIN

On December 3rd the House approved the Senate version of a bill which will raise prices and restrict consumer choice by protecting the American textile, apparel, copper, and shoe industries from open competition. The bill awaits approval or veto by President Reagan. The textile-apparel-copper-shoe (TACS) bill will raise consumer prices by $6.8 billion in 1986, destroy thousands of jobs in the retailing and shipping industries, hurt U.S. exporters, and provoke foreign retaliation.

In its original form, TACS dealt only with textiles and apparel. However, previous successes of the textile lobby made it an attractive protectionist bandwagon. Like its notorious spiritual father, the Smoot-Hawley Act of 1930, the TACS bill expanded to include other industries, namely copper and shoes. It now contains restrictions on textile and shoe imports and requires the President to negotiate voluntary restraint agreements (VRAs) with other governments to limit their copper exports to the United States.

The avowed purpose of TACS, like Smoot-Hawley, is to save American jobs. Its supporters point to the jobs it temporarily saves while ignoring those it permanently destroys. It is instructive to note that Franklin D. Roosevelt in 1932 labeled Smoot-Hawley "one of the most important factors in the present worldwide depression." According to F.D.R., Smoot-Hawley "destroyed international commerce."

More than 50 years later, Congress is taking America down the same road. Almost all of the jobs "saved" actually represent mere transfers of employment from some industries to others. According to the International Business and Economic Research Corp. (IBERC), the textile and apparel portions of TACS will save 20,627 jobs within those industries but will eliminate 20,373 jobs in retail businesses alone. This forced transfer of workers from one sector to another will cost consumers $5 billion per year, or nearly $20 million per job "saved". Yet the "saved" jobs have average annual salaries of only $10,000.

IBERC estimates that TACS would save 18,700 jobs in footwear manufacturing. But footwear retailers contend that approximately 7000 retail jobs would be destroyed. The bill would cost shoe buyers an average of $2.5 billion annually, or $210,000 per footwear job "saved". Limits on copper imports can be expected to have the same effects: consumers will pay more for less, and workers will be kept from moving to more productive jobs.

Protection for one industry also damages totally unrelated industries. In 1982, the United States limited textile imports

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from China. The restriction virtually ended Chinese wheat purchases from the United States because China's ability to earn dollars was curtailed. Parr Rosson, a professor of agricultural economics at Clemson University, noted, "The Chinese couldn't earn the cash by selling their textiles, so they stopped buying wheat." Protection of mill workers ended up harming farmers.

But the greatest burden of protectionism falls on those who can least afford it. Since poor people spend a larger portion of their incomes on necessities like clothing and shoes, TACS will impose a proportionally heavier TAX upon them. Poor people will pay a larger share of their income to support privileged corporations which charge higher prices for clothing and shoes.

Presidential approval of the TACS bill will also invite foreign retaliation. Smoot-Hawley touched off a vicious round of "beggar-thy-neighbor" trade policies worldwide, but one need not look back to 1930 for evidence of retaliation. China has already threatened retaliation against the TACS bill now on the President's desk.

Segments of the textile, apparel, copper and shoe industries are themselves hurt by protectionism. The textile industry includes firms specializing in the production of high-technology synthetic fibers and fabrics which are in large part exported. The TACS bill and the retaliation which will surely follow will have the perverse effect of replacing high-tech, well paid, education-intensive employment with lower-paying sweatshop jobs.

The textile and apparel industry has had "temporary" protection for the last 11 years, but has not learned how to compete. The shoe industry enjoyed "temporary" protection from 1977 to 1981, based on its promise to become more competitive. Instead, both have learned best how to lobby Congress for more protection from the American consumer.

The best protection for people who are faced with the task of adjusting to new conditions is a thriving, competitive economy which vigorously produces new opportunities and the best goods at the lowest prices. We cannot have both thriving economic progress and protectionism. We cannot strengthen American industry by weakening competition.

President Reagan can take a clear stand benefitting citizens rather than the special interests by vetoing the TACS bill. Moreover, such action will help the President prevent an onslaught of additional protectionist measures from reaching his desk. Vetoing TACS will send Congress a strong message that America does not intend to close the doors on the future.

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CITIZENS FOR A SOUND ECONOMY

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EXPIRATION OF THE MANUFACTURING CLAUSE: CLOSING THE BOOK ON PRINTING INDUSTRY PROTECTIONISM

On June 30, the manufacturing clause of the copyright laws will expire. The manufacturing clause is anti-consumer, anti-competition, violates the General Agreement on Tariffs and Trade (GATT), and could very well reduce employment in the printing industry it is designed to protect.

The manufacturing clause requires resident American authors of non-dramatic literary material to print their works in Canada or the United States in order to retain copyright. Its practical effect is that most non-dramatic books, periodicals, newspapers, directories, instruction materials, manuals, and other commercial printing sold in the U.S. must be printed domestically.

From the consumer's standpoint, the manufacturing clause functions much like a tariff and creates economic inefficiency. It limits choice and raises book prices by an average of 12 percent, costing U.S. consumers $500 million more per year for printed materials. It also distorts consumption and investment, resulting in a $29 million annual efficiency loss to the economy.

Not only does the reading public bear the burden of the manufacturing clause through higher prices, but American authors suffer since their works must compete against foreign authors whose works may be printed at the most cost efficient locations around the world. In particular, new authors and illustrators are hurt because publishing untested works is made more risky. Therefore many new works may never be published if the manufacturing clause is extended.

Consumers and authors find the manufacturing clause offensive, as do our allies and trading partners within the GATT. The United States has already been held in violation of the GATT because of the manufacturing clause. Its extension will severely undercut congressional attempts to eliminate unfair trade practices abroad, and will be viewed as wholly inconsistent with this country's claims to leadership in the world copyright community.

Furthermore, the Department of State's Ad Hoc Working Group on U.S. Adherence to the Berne Convention has determined that the manufacturing clause is incompatible with U.S. efforts to abide by this international agreement. The strength of the Berne Convention agreement, which is the world's strongest international agreement protecting copyright property rights, depends on the good faith and cooperation of those nations claiming to subscribe to its principles. Consequently, U.S. non-cooperation with this agreement denies authors the higher level

of copyright protection afforded by the Berne Convention and results in significantly less secure U.S. intellectual property rights for printed materials.

Yet, despite these serious deficiencies with the manufacturing clause, Congressman Barney Frank and Senator Howard Metzenbaum are promoting the unlimited extension of the clause in two pending bills, HR 3465 and S 1938. Going one step further, Senator Strom Thurmond has introduced a bill (S 1822) that would make the manufacturing clause permanent and expand its coverage to include all copyrighted "printed material in the English language" and eliminate the Canadian exemption. The justification offered for these bills is to save American jobs. But just the opposite is true.

The Canadian exemption, added to the Manufacturing Clause in 1978, resulted in no job losses within the American printing industry despite an absence of language or transportation barriers. Instead, Canada agreed to lower all its duties on imported materials of a scientific or educational nature from 10 percent to zero. American printers were able to increase their share of the Canadian print market while maintaining their percentage of the domestic market.

The most dramatic effect on American employment would come from inevitable retaliation by the European Economic Community. The E.E.C. has formally announced before the GATT that the manufacturing clause is costing it $250 million in employment opportunities, and it will retaliate if the clause is extended. Great Britain, which has officially sent members of Parliament to the United States to lobby U.S. congressmen against the manufacturing clause, has vigorously opposed the clause in the House of Commons. Its estimates of damages caused by the manufacturing clause are much higher than those of the EEC, between $300 and $500 million. Great Britain has promised that it will encourage the European Community to retaliate against U.S. paper and tobacco products if the clause is not allowed to expire. Furthermore, Canada retains the right to reenact the 10 percent print tariff it removed in the 1970's, and is likely to do so. Any of these retaliatory actions would upset employment in the printing, paper, and tobacco industries. Other retaliation and counterretaliation could affect U.S. agriculture, electronics, and consumer goods industries.

The copyrights of American authors and publishers should not be held hostage to protectionist trade politics. Our reading and consuming public, authors, publishers, manufacturers, and workers should not be forced to pay an unnecessary price to protect the special interests of a few. The manufacturing clause is a roadblock to gaining greater access to foreign markets. Its expiration will increase opportunities for American authors and illustrators and grant consumers a wider variety of less expensive printed products.

Richard Wilbourn
Policy Analyst

/C/S/E/
CITIZENS FOR A SOUND ECONOMY

CAPITOL COMMENT

No. 12
April 17, 1986

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REMOVING BARRIERS TO PHARMACEUTICAL EXPORTS -- A PRESCRIPTION FOR MORE JOBS

This year's balance-of-trade figures will once again be used to predict imminent economic Armageddon. Political pressure will mandate some sort of action to reduce the trade deficit. This means Congress will do one of two things: 1) restrict imports, or 2) promote increased exports. The first option could lead us down the road of Smoot-Hawley protectionism, the second toward economic prosperity. Unfortunately, while Congress occupies itself by dreaming up new trade barriers, important positive steps could be taken instead to reduce our trade deficit by increasing exports.

A good first step toward export expansion would be repeal of the law which prohibits the overseas sale of drugs which have not been approved for domestic consumption by the Food and Drug Administration (FDA). Even though these products have been approved by medical authorities in other countries, American manufacturers are currently excluded from entering these markets.

Competitors from England, Japan, Switzerland, France, and West Germany are not faced with these restrictions. This puts U.S. companies at a severe competitive disadvantage unless they build plants overseas or license out their products to foreign companies. For instance, American Cyanamid spent $11 million to build facilities in England to produce drugs not yet approved by the FDA. This factory would have been built and operated in America if overseas sales had been allowed.

Needless to say, the export ban costs American jobs.

Repeal of this export restriction would increase U.S. export income by an estimated $500 million. Additionally, it would create an estimated 10,000 jobs.

Domestic jobs are sacrificed when products are licensed out to foreign companies. The example of Genentech demonstrates this all too well. Genentech produces two drugs which are expected to be approved by West Germany. They would prefer to manufacture them in their San Francisco plant, but the law prohibited this, and a West German company was contracted to produce and market the drugs in Europe.

Ironically, this restriction has been instituted not by foreign governments trying to protect their local industries, but by the U.S. Congress. Thanks to the efforts of self-appointed "consumer advocates", Congress has removed American companies

Note: Nothing written here is to be construed as necessarily reflecting the views of Citizens for a Sound Economy or as an attempt to aid or hinder the passage of any bill before Congress.

from effective competition in the international pharmaceutical industry. Since the drugs in question are already being sold overseas, one must wonder what purpose the restriction serves.

Proponents of the prohibition argue that it would be wrong to sell drugs to other countries that have not yet been approved for use in our country. This concern is noble, but flawed. If there is demand for a new drug, someone will satisfy that demand with a product. Ironically, many overseas pharmaceutical manufacturers do not exhibit the quality control and labelling standards of U.S. firms.

Also, proponents of the prohibition assume the FDA should be the worldwide authority for approval of drugs. In fact, the FDA product approval procedure is notoriously time consuming and expensive. There is a point at which the costs of exhaustive tests outweigh their benefits. Safety can be maintained by the reasonable use of product liability. Even though U.S. companies lead the world with roughly a quarter of all new drug discoveries, American consumers are often the last to benefit.

Present law assumes that developed nations are unable to adequately regulate the marketing and labelling of drugs in their countries. In fact, the entry of American companies into foreign markets would <u>increase</u> safety for foreign users by ensuring higher quality merchandise. Foreign drugs, often produced by nationalized companies not subject to liability, are often the most lax with quality control.

If Congress is serious about addressing economic issues such as job creation and trade expansion in a positive way, repealing export restrictions would be a good first step. Allowing American businesses to compete on an equal footing with our foreign competitors will create American jobs and decrease our trade deficit without increasing health risk and foreign consumers, erecting trade barriers or costing American taxpayers a cent.

Daniel Mitchell
Policy Analyst

Mr. PEASE. Now, we will hear from Doreen Brown, president, Consumers for World Trade.

STATEMENT OF DOREEN L. BROWN, PRESIDENT, CONSUMERS FOR WORLD TRADE

Ms. BROWN. Thank you, Mr. Pease. I will be brief and summarize my summary if you would like; but I would like to ask to submit for the record, in addition to our full statement, a copy of a letter to Chairman Rostenkowski dated April 16, 1986, copies of which have been sent to all members of the committee. The letter has been signed by 30 corporations, associations, and consumer organizations, including of course Consumers for World Trade, expressing the views of those 30 signatories about the bill and particularly stressing their opposition to three proposals:

First, the causation standard changes; second, any automatic import restrictions and, third, the shift of authority in 201 cases from the President to USTR.

Mr. PEASE. We will enter those matters into the record.

Ms. BROWN. In terms of our own recommendations, as you know CWT is a consumer organization concerned with the interests of consumers in international trade. One of our big concerns has been that the interests of the consumers, or the costs to the consumers of a recommended remedy, are not considered until the very last stages of the process, when the President is mandated to do so.

In the meantime, a lot of publicity reaches the public about the ailing industry and about the workers affected, but very little publicity is given to the cost to the consumer of the proposed remedy. As a result, consumers, who have limited opportunity to present their case to the ITC, very seldom react to the consequences of this type of import relief.

We would like to suggest, therefore, an amendment to the Trade Act of 1974 which would require that the International Trade Commission prepare and make public an analysis of the economic impact of the duty or import restriction under consideration on the consumer and on the Nation as a whole from the moment that that remedy has been decided upon and recommended to the President.

More details on that proposed amendment are in our full statement.

We believe, No. 2, that the President should retain his decision-making authority since he is the only one mandated to take the consumer interests into consideration. This mandate is the only time in the Trade Act of 1974 that the consumer is mentioned or must be considered.

We feel that the President's discretionary authority should not be weakened by requirements for automatic relief or retaliation and that he should be given the ability and the leeway to carry out his constitutional mandate. We believe that workers displaced by imports or by trade restrictive actions should be given temporary assistance in retraining and relocation.

We also extend that to workers who are affected by trade in any way, whether it be by retaliation or because of a restrictive trade action. We believe they also should be afforded that consideration.

We approve, of course, of negotiating authority for a new GATT round and we approve of a number of the items in the agenda that have been suggested in the legislation; but we do feel that, if these guidelines for a GATT round are enunciated, the negotiators must still retain enough freedom of action to be able to negotiate without having their hands tied, in order to reach the goals that these items suggest.

Of course, we would conclude by saying that the United States must not abandon the principles of an open multinational trading system for protectionist policies which are ineffective and costly to American consumers.

Mr. PEASE. Thank you, Ms. Brown. You are a person of your word. We appreciate your testimony.

[The prepared statement and attachment follow:]

CWT
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April 16, 1986

CWT TESTIMONY ON TRADE REFORM LEGISLATION
BEFORE THE SUBCOMMITTEE ON TRADE
HOUSE COMMITTEE ON WAYS AND MEANS

Consumers for World Trade (CWT) is a national, non-profit membership organization established in 1978. CWT supports expanded foreign trade to help promote healthy economic growth; provide choices in the marketplace for consumers; and counteract inflationary price increases. CWT believes in the importance of increasing productivity through the efficient utilization of human and capital resources. CWT conducts its educational programs to keep American consumers informed of their stake in international trade policy and speaks out for the interests of consumers when trade policy is being formulated.

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President, Roth Properties
SEYMOUR J. RUBIN
Executive Vice President, American Society of International Law
PHILIP H. TREZISE
Senior Fellow, Brookings Institution
Executive Director
JANE E. DOCKERY

CWT RECOMMENDATIONS

1. An amendment to the Trade Act of 1974, requiring that the International Trade Commission (ITC) prepare and publish an analysis of the economic impact of the duty or import restriction considered on the nation as a whole.

2. The President should retain decision-making authority.

3. The President's discretionary authority should not be weakened by requirements for automatic relief or retaliation.

4. Workers displaced by imports or by trade-restrictive actions should be given temporary assistance in retraining and relocation.

5. The linkage of import relief to an industry adjustment plan should be considered, as long as the President retains final decision-making authority.

6. Negotiating authority for a new GATT round should be given. It can include guidance in agenda items but negotiators must be allowed sufficient flexibility. Negotiating authority should not be linked to the convening of a multinational conference on the monetary system.

7. The U.S. must not abandon the principles of an open multinational trading system for protectionist policies which are ineffective and costly to consumers.

EXECUTIVE SUMMARY

Consumers for World Trade (CWT) is a national, non-profit organization established in 1978 concerned with the interest of consumers in international trade policy. We believe a significant threat to American consumers would result if some of the trade law reform proposals, especially in Sections 201 and 301 of the Trade Act of 1974, were adopted by Congress.

The impact on consumers and on the national economy of escape clause and unfair trade practices cases has, over the years, been considered only at the last stages of the decision-making process. Meanwhile the American public has been saturated with graphic stories of the distressed industry and its workers, but little publicity is given to the effect of a proposed remedy on the nation and its citizenry. Consumers have limited opportunity to testify before the International Trade Commission and seldom have available information to press their case effectively. As a result there is little public awareness and reaction to such trade actions and their consequences.

CWT PROPOSAL

CWT proposes an amendment to the Trade Act which would require that the ITC prepare and publish an analysis of the economic impact of the duty or import restriction under consideration. This analysis should include the broad issues which the President is mandated to consider as well as others: the cost to consumers; the effect on prices, pre-tax revenues, and jobs in the ailing industry; the effect on output, employment, and profits in related industries; in the case of quotas, the effect on the current account balance and on the GNP. Further details are provided in the full text of our testimony.

Although Section 202c of the Act directs the President to take broader considerations into account when deciding upon escape clause relief, it does not cover the full range of effects, nor direct that the findings be made public. This proposal will not prevent grants of import relief, but assures that decisions about them will be taken in the light of a comprehensive evaluation of their economic aftermath. We believe strongly that responsible public awareness will result in a more effective conduct of our country's trade policy.

TRANSFER OF DECISION-MAKING AUTHORITY

CWT opposes proposals to transfer decision-making authority from the President to USTR or any other body. According to present law, the President must take into account broader factors such as the effectiveness of the relief; international interests and the consumer interest. This mandate did not exist before the Trade Act of 1974. The American public pays the ultimate price for trade restrictive practices - an estimated over $50 billion

yearly. The President, the only elected official with a national constituency, is the proper person to fulfill that responsibility.

AUTOMATICITY

CWT opposes the call for automatic relief or retaliation. This would weaken the President's discretionary right to dispose of cases in a manner which he deems most favorable for the nation as a whole. The President must be allowed the flexibility necessary to carry out his constitutional responsibility.

In 1985, the President rejected the imposition of quotas on imported non-rubber footwear. This led to assertions of the unavailability of import relief under the present statute. On the contrary this was a justified application of the criteria required by the Trade Act. The President felt quotas would not help the industry, would encourage retaliation, and result in a huge cost to consumers. In effect, an economic study under the direction of Dr. William R. Cline justified this decision. Consumers would have payed $2 billion annually in extra costs. Prices would have increased by 13 percent and consumption decreased by 3 percent. The consumer cost per job created would have been, according to the ITC itself, $50,000 per $14,000 a year job.

TRADE ADJUSTMENT ASSISTANCE

Generally, CWT supports some form of temporary assistance to workers displaced because of imports. Logically, we also favor support for workers displaced because of any other trade actions, such as retaliation or any trade-limiting action. Emphasis should be on retraining and relocating the worker, not a direct subsidy to the industry.

There is some merit to linking import relief to an adjustment plan, but it raises questions concerning the type of adjustment needed to compete in the world market and how progress in implementing the plan is to be determined. In any case, the President should retain the authority to determine whether the recommended relief is compatible with U.S. national economic interests.

NEGOTIATING AUTHORITY

CWT strongly supports a new round of international talks. The multilateral conduct of trade as established in the GATT has been overcome by unilateral, bilateral and regional actions. Clearly, Article I of the GATT has been seriously weakened. We need to restore confidence in the GATT and extend its coverage to issues of present concern.

We favor a number of the items proposed relating to dispute settlement and enforcement mechanisms; elimination of subsidies; coverage of services; investments and intellectual property; the substitution of tariffs, more easily apparent to consumers, for quotas; and the better integration of agricultural trade in the

GATT system. It is important, however, if these items are enunciated in the negotiating authority, that our negotiators be given sufficient flexibility to progress toward these goals.

CONCLUSION

Although there is no such thing as a perfect statute, there are infinite dangers in trying to revise laws to meet everyone's needs. Section 201 and 301, when used judiciously, have generally worked as designed. We might profit from seeing whether our own trade practices, albeit better than some others, would stand up to the requirements of our own laws.

It is essential for the U.S. to strive for thoughtful trade policies which recognize the fact that a healthy trading system cannot be achieved if the leading trading nation abandons the principles of open multilateral trade in favor of the quick-fixes of protectionism. This is an ineffective solution which results in a heavy cost to all, especially the American consumer.

Consumers for World Trade (CWT) is a national, non-profit organization established in 1978, concerned with the interest of consumers in international trade policy. A significant threat to American consumers would result if some of the trade law reform proposals, especially changes in sections 201 and 301 of the Trade Act of 1974, were adopted by Congress.

The Interest of Consumers - A Proposed Amendment to the Trade Act

We have followed escape clause and unfair trade practices cases over the years, and have been very concerned that the economic impact of trade remedies on consumers and on the nation as a whole is considered only at the very last stages of the decision-making process. By the time the President announces his decision, the American public has been saturated with graphic stories of the problems of the ailing industry and its workers. The effect of a proposed remedy on the nation and its citizenry, however, is never adequately publicized. Unlike an action taken by Congress, the consumers' opportunity to make their views known before the International Trade Commission (ITC) is limited and, unless an independent economic study has been prepared, consumers do not have enough information to present their side effectively. As a result, there is little public awareness and reaction to such trade actions and to their consequences.

CWT believes that the cost of a proposed remedy should be researched and made public from the time the remedy has been selected up to the President's final determination. In this context, we are

proposing an amendment to the Trade Act which would require that the ITC prepare and publish an analysis of the economic impact of the duty or import restriction under consideration.

This analysis could include broader issues which the President is mandated to consider and others. For example:

An estimate of the cost to consumers of the restrictions.

An estimate of the effect on prices, pre-tax revenues, and jobs in the industry(ies) to be protected.

An estimate of the effect on output, employment and profits in related industries, taking into account the effect on production costs and the international competitive position of these other industries. These estimates should take into separate account the effects of possible retaliatory trade actions by our trading partners.

In the case of quotas or other quantitative restraints, an estimate of the effect on the current balance of the U.S. payments account.

An estimate of the net impact on the GNP.

The remedies proposed to afford relief to an import injured industry have an impact going far beyond the protected sector. If the products involved are inputs for other industries, such as steel and copper, prices and competitive positions in those industries are affected. If the products are for final consumption, such as shoes, the position of retailers is worsened. At the end of the line, whatever the products concerned, the income of consumers is reduced. Beyond that, since import protection is a decision to forego efficiency gains from trade, the national economy loses.

These broader consequences of protection are not adequately

recognized in trade laws. Section 202c of the Trade Act of 1974 directs the President to take some of the secondary considerations into account when deciding upon escape clause relief. It does not cover the full range of the adverse effect of protection, nor does it require that the full findings be made public.

Techniques for assessing relative costs and benefits of import relief have been improved in recent years. When such assessments have been made the basis for decision-making has been notably broadened. The proposal herein is to make the cost-benefit assessment a standard practice in the consideration of claims for protection. It would not prevent grants of import relief but it would assure that decisions about them would be taken in the light of a comprehensive evaluation of their likely economic aftermath.

In addition, we cannot emphasize enough how important it is for the consumer to understand the broader effects of international actions. We believe strongly that responsible public awareness would result in a more effective conduct of our country's trade policy.

Transfer of Decision-making Authority

CWT opposes any proposal to transfer decision-making authority on 201 or 301 cases from the President to USTR or any other body. According to present law, the President in making his decision to accept, alter or reject an ITC recommendation for relief to an injured industry, must take into account a number of additional factors, such as: the effectiveness of the proposed relief;

competition; international interests and the effect of the remedy on consumers. This mandate to consider the interest of consumers did not exist before the Trade Act of 1974, and it is the only time that the consumer is mentioned in the entire law. The consumer interest should be a major factor in the formulation and conduct of trade policy, since the American public pays the ultimate price of trade restrictive practices, which is estimated to be over $50 billion yearly. Any actions which affect consumers negatively, affect the national economy as well. This is why the mandate to consider their interest can be neither ignored nor eliminated. The President, the only elected official with a national constituency, is the proper person to fulfill that responsibility.

Automaticity

CWT opposes the call for automatic relief or retaliation contained in some of the proposals. This would weaken the President's discretionary right to dispose of cases in a manner which he deems most favorable for the nation as a whole. The President must be allowed the flexibility necessary to carry out his constitutional responsibility.

To the extent that automaticity proposals were prompted by the President's rejection, in 1985, of quotas for imported non-rubber footwear, it is a mistake to conclude that this indicated an unavailability of import relief under the present statute. To the contrary, this case demonstrated the justified application of broad criteria as required by the Trade Act. In this instance,

5.

the President did not consider that the ITC's trade-restrictive remedy , based on past history, would be an effective way to help the industry. In addition, he felt that imposing quotas would result in certain retaliation by our trading partners and in a huge cost to consumers.

This last concern was verified in an economic study prepared by International Economic, Inc. under the direction of Dr. William R. Cline which indicated that reducing footwear imports by 18 to 24 percent would have cost American consumers $2 billion annually in extra costs; increased prices by 13 percent and decreased consumption by nearly 3 percent. Total consumer costs would have been $10 billion or higher over a five year period. The consumer cost per job created in the industry would have been as high as $62,4000. The ITC, itself, estimated a cost of approximately $50,000 per $14,000 a year job saved. The heaviest part of this burden would have been forced upon low and fixed-income consumers. These statistics certainly justify the President's decision.

In addition, there are occasions when the President has rejected an ITC proposal and opted for negotiated voluntary export restraint arrangements (VERs) which would afford comparable relief to an injured industry. Unfortunately, these VERs do not take into account the consumer interest. The recent cases of steel and automobiles are clear examples. CWT opposes the use of VERs as a method of quantitatively restricting imports without regard for the negative effect of these restrictions on the national interest.

6.

Trade Adjustment Assistance

Generally, CWT supports some form of temporary assistance to workers in a ~~non-~~competitive industry who have been displaced because of imports. (Pure logic would suggest that such assistance should be tendered as well to workers displaced because of retaliation against a U.S. industry or those whose jobs were related to an imported product which has been affected by a trade-limiting action.) We believe that in developing an effective adjustment assistance plan the emphasis should be on retraining and relocating the worker, not on a direct subsidy to the industry.

CWT finds the proposal of linking import relief to an adjustment plan drawn up by representatives of labor, management, consumers and communities worthy of serious consideration. It raises questions, however, on the ability to determine the type of adjustment necessary to ensure competitiveness in an open market, and how progress in implementing the plan is to be measured. Should this proposal be adopted, the President should retain the authority to determine whether the recommended relief is compatible with the U.S. national economic interest.

Negotiating Authority

CWT strongly supports negotiating authority for a new round of international talks. We have reached a critical time in our trading system, when the multilateral conduct of trade as established in the GATT has been overcome by unilateral, bilateral and regional trade actions. Clearly, Article I of the GATT

has been seriously weakened. In order to restore confidence in the GATT as the best vehicle for the governance of international commerce, it must be strengthened and its coverage extended to issues of present concern.

CWT favors a number of the agenda items proposed in the various bills, with the understanding that our negotiators will be given sufficient flexibility to progress toward these goals. It should also be kept in mind that, if not all of the agenda items are successfully resolved in this round, it will not signify the failure of the system.

CWT opposes the linkage of negotiating authority to the convening of a multinational conference on the monetary system. Although we agree that U.S. trade policy must be formulated within the context of U.S. macro-and micro-economics and that the monetary system plays a major role in international trade, it would be a mistake to delay the GATT negotiations while awaiting a Conference that may not be a feasible way to deal with world monetary arrangements.

Among the proposed agenda items, CWT supports: strengthening the dispute settlement and enforcement mechanism; rules for agricultural subsidies with the long-term objective of eliminating all subsidies; extending GATT coverage to services, investments and intellectual property rights; graduating advanced developing countries out of the General System of Preferences; substituting tariffs, more easily apparent to consumers, for quotas; completing negotiations on a safeguards code and integrating agricultural trade into the GATT system.

8.

Conclusion

There is no such thing as a perfect statute. However, there are infinite dangers in attempting to revise laws so that they meet the needs and interests of everyone affected. CWT believes that the principal shortcoming of the international trading system is that the domestic import relief laws are not accepted as a rule of conduct for U.S. trade policy but as a means of protecting domestic producers from foreign competition or as a threat to our trading partners to achieve export market expansion. In trying to solve trade problems, we believe it is more efficient to place the emphasis on the carrot rather than the stick. This was clearly demonstrated in the progress made during the Moss talks with Japan. Sections 201 and 301, when used judiciously, have generally worked as designed. We should be asking ourselves if our trade practices, albeit better than some others, would stand up to the requirements of our own laws.

At a time when strong protectionist sentiment in Congress is endangering our country's open trade posture, it is essential to strive for thoughtful trade policies aimed toward a global liberalization of markets rather than the closing of U.S. doors to foreign products. Such policies recognize the fact that a healthy trading system cannot be achieved if the largest trading nation abandons the principles of open multilateral trade in favor of the quick-fixes of protectionism. Protectionism is not an effective solution. It has been tried many times and has failed, at a heavy cost to all concerned, especially the American consumer.

61-974 O - 86 - 21

April 16, 1986

Honorable Dan Rostenkowski
Chairman, Committee on Ways and Means
United States House of Representatives

Dear Congressman Rostenkowski:

As Congress considers omnibus trade legislation, the listed organizations and companies -- representing U.S. exporters and importers, manufacturers and service industries, retailers and consumers -- urge you to avoid the fundamental changes in section 201 ("escape clause") law discussed below.

Unlike many of the other provisions of U.S. trade law now under review by the Congress, section 201 relief is not predicated upon any unfair trading practice on the part of foreign governments or manufacturers. Rather, it provides for restrictions on imports that are fairly traded in the United States. Fair competition, which contributes to U.S. and worldwide economic growth, should not be restricted unless, as under existing law, it is a substantial cause of serious injury to a domestic industry and temporary relief will foster industry adjustment to competition.

In particular, we oppose those proposals which would:

(A) lower the "causation" standard, either by reducing it to "a" cause or by providing that a recession cannot be a greater cause of injury than imports. Either of these changes could result in a dramatic increase in import restrictions, particularly during periods of economic slowdown, when imports are not the basic cause of the problem. This could produce a substantial contraction of international trade and accelerate, rather than reverse, worldwide economic recession. Import restrictions imposed under the "escape clause" give rise to an obligation for compensation under Article XIX of the GATT, and thus a proliferation of U.S. imposed trade barriers during recessionary times would entitle our trading partners to adopt corresponding measures against U.S. exports. In our view, this is not an effective way to deal with general recessionary conditions.

(B) provide automatic import restrictions where the ITC finds injury and accepts an adjustment plan. We believe the President should retain the authority to provide adjustment assistance or other alternative forms of relief where he concludes that import restrictions (quotas or tariffs) will not advance the long-term competitiveness of a domestic industry or will impose excessive costs on American consumers and other industries.

(C) shift authority in 201 cases from the President to USTR. In our view, the President is in the best position to balance the frequently competing domestic economic interests in these cases and make an overall determination of the national economic interest.

* We urge the Congress to avoid these unhelpful changes in section 201 law.

American Association of Exporters & Importers
American Association of Port Authorities
American International Automobile Dealers Association
American International Group, Inc.
American Retail Federation
American Soybean Association
Automobile Importers of America
Caterpillar Tractor Company
Chevron Corporation
Citizens for A Sound Economy
Coalition of Service Industries
Competitive Enterprise Institute
Consumers for World Trade
Continental Grain Company
Direct Selling Association
IBM Corporation
International Teleconferencing Association
League of Women Voters of the United States
Mobil Oil Company
National Association of Stevedors
National Association of Wheat Growers
National Automobile Dealers Association
National Constructors Association
National Corn Growers Association
National Foreign Trade Council
National Grange
National Retail Merchants Association
National Soybean Processors Association
Phillips Petroleum
RCA Corporation

For further information, contact Doreen Brown, Consumers for World Trade (785-4835).

Mr. PEASE. Mr. Frenzel.

Mr. FRENZEL. Mr. Chairman, staff reminds me of how patiently the witnesses have waited. We once had a colleague here by the name of John Zwach, and he introduced a resolution that suggested that we call the roll in inverse order so that he would be the first one called.

I notice Ms. Brown, who testifies on nearly all of our major bills, is almost always the last witness and has to sit through the presentations of all the others. I hope someday all the others have to sit through one of your presentations because I consider them excellent and I think they would be very enlightening for those who have gone before you.

In general, I take it you are not all together thrilled by the draft bill that the subcommittee will be working on.

Ms. BROWN. Not overly so, no, Mr. Frenzel.

Mr. FRENZEL. The things that you do support, such as the granting of new negotiating authority, are probably items that could serve us just as well next year as this year.

Ms. BROWN. Are you saying that they are items that you need not authorize this year?

Mr. FRENZEL. Well, if through some magnificent stroke of good luck Congress did not legislate in the trade field this year, the trade world would not fall apart.

Ms. BROWN. You are quite right.

Mr. FRENZEL. And, in fact, there may be some, even, out there who think that that would be a good idea.

Ms. BROWN. I agree, although I am not saying that any statute cannot be improved. I certainly believe that there is room for trade law reform.

I think it has to be done very cautiously because if every self interest is represented in reform of our trade laws, you can end up with a terribly protectionist bill in the name of trade expansion.

Mr. FRENZEL. Thank you very much.

Before you testified another witness was talking to one of the members of the subcommittee with respect to whether consumers should be involved in the discussions and the answer was, "Well, labor and business and government were ample."

I assume you have an opinion about that.

Ms. BROWN. Yes. I was taken aback when I heard him say that, particularly when he went on to say that it should only be the players who are affected by the trade action that should be involved.

Obviously, dismissing consumers as not being affected by trade policy, is nonsense. We believe very strongly that the consumer impact is perhaps an overriding interest and closer to a national interest than any one self interest is.

Mr. FRENZEL. In my legislature, we used to have a saying if big labor and big business agreed, it was an absolute certainty that the taxpayer and the consumer were going to be disadvantaged in some major way. That, I think, is one of the great concerns that I have about this bill.

There is a fair amount of consensus between those elements, but we certainly don't seem to have taken into account those people that you represent.

Mr. Wilbourn, I enjoyed your testimony.

Mr. WILBOURN. Thank you.

Mr. FRENZEL. Can you tell us something about the CSE as to its membership, who sustains it?

Mr. WILBOURN. Yes, Mr. Frenzel, I would be happy to.

We are a citizens group with 250,000 members nationwide. These people are a broad representation of America. We are very proud of that.

I believe the amount of the average contribution is below $15 per person. These contributions represent the bulk of the income which CSE receives, but we do also receive some from foundations and corporate grants.

Mr. FRENZEL. Who organized it?

Mr. WILBOURN. A gentleman named Richard Fink who was an economics professor at George Mason University. It was organized about 2 years ago. We are centered on economic issues. We deal with, obviously, trade and, in addition to that, tax, Social Security and privatization.

We have found that there is a tremendous interest within the citizens of the United States to be represented in Government. We see ourselves as bringing together all the interests of a spread-out citizenry against certain special interests.

Mr. FRENZEL. How big a staff do you have?

Mr. WILBOURN. Right now, it's 16 people and we are in the process of hiring two more people. Our growth has been so fast that we have hired, I think, 10 people within the last 9 months.

Mr. FRENZEL. Well, I think your paper is extraordinarily well done.

Mr. WILBOURN. Thank you very much.

Mr. FRENZEL. I congratulate you and your membership. I'm sure Ms. Brown is glad to have another player in the game that supports some of the things, at least, that she does.

Mr. WILBOURN. Ms. Brown is someone who, on trade issues, we emulate very much. She is certainly a leader that we respect a great deal.

Mr. FRENZEL. So do I. Thank you.

I am also glad to see that you are trying to keep Congress' eye on the ball with respect to the deficit. The greatest single thing we can do for consumers, farmers, traders or anybody is to reduce the deficit.

Mr. WILBOURN. I could not agree with you more.

Mr. FRENZEL. Thank both of you. I know that all of us have other things to do. The chairman has graciously extended the period to benefit all of us.

I yield the balance of my time.

Mr. PEASE. Thank you, Mr. Frenzel. I was interested in your questions to Mr. Wilbourn about his organization as I had never heard of it either.

Mr. Wilbourn, I am familiar with consumer organizations that represent liberal consumers. Some of them are liberal leaning, some are moderate, some of them are conservative leaning.

As I read your testimony, I think I detect a certain conservative leaning posture. Would I be incorrect in making that assumption?

Mr. WILBOURN. I think maybe free market would be a more accurate term. Our goal is to return economic decisionmaking to citizens. Unlike many of the establishment consumer organizations, we believe consumers are best served by a reduction in Government intervention.

Mr. PEASE. I see. Very good.

Ms. Brown, would you care to characterize your fellow organization here, this upstart on the block, the new kid?

Ms. BROWN. We have known and worked closely with these upstarts, for some time now, and find that certainly on trade—which is our only interest—that we have a lot of common beliefs and that we agree on almost everything.

We do not get into the wider economic aspects as CSE does, but we do work in coalition with them on a great many issues. And we have appeared as witnesses on the same panel a number of times.

Mr. PEASE. Thank you very much. We appreciate testimony from both of you.

The committee will stand in recess until 2 p.m., at which time we will hear testimony from our former colleague, Charles Vanik.

[The committee recessed.]

Mr. PEASE. This hearing of the Ways and Means Committee is back in order. Our remaining witness for the day is our distinguished former colleague, member of the Ways and Means Committee and former chairman of the Trade Subcommittee, Mr. Charles Vanik.

Charlie, we are delighted to have you back and we look forward to your insights.

Mr. VANIK. Mr. Chairman, I want to say at the outset that I am sorry I missed the closing of the morning session. I was told that I was not required here until after 2 and I was here, and I could have stayed. I did not realize your agenda would change, but I understand that process.

STATEMENT OF CHARLES A. VANIK, PARTNER, SQUIRE, SANDERS & DEMPSEY, WASHINGTON, DC

Mr. VANIK. Mr. Chairman, when I first came to this committee in 1976 and was responsible for its administration, we had a small deficit. I think it was running about $22 billion.

When I left, in 1981, I think it managed to get up to about $42 to $45 billion. I remember our former colleague, Jim Burke, taking me to task for the fact that in my administration I had somehow permitted the trade deficit to almost double.

Well, I would have to say at this point that I am puzzled at what is going on here. You might tell Chairman Gibbons that we are all very much concerned about what has happened to the trade deficit since I left: maybe the same forces are at work in adding to the trade deficit.

I support the proposal made by the chairman of the Trade Subcommittee, Mr. Gibbons, to make present trade laws more responsive and more effective. Procedures must be clear, positive in their application and accessible; and I believe the President should be required to retaliate promptly against unfair practices.

As a matter of fact—and I think that Mr. Schulze would agree with me—in feeling that trade laws ought to operate more under a code of automatic operation where certain conditions would precipitate certain definite actions not subject to discretionary changes by others in the trade process.

Exporters and importers can live and carry on business if they know what the rules are. Furthermore, I believe that legislation is long overdue on deceptive labeling and that should be corrected.

The terminology of trade has not been reviewed in over 30 years. The American flag and the flags of other nations are improperly draped over offshore produced products and merchandise, and this is not done in the spirit of patriotism.

It is done to deceive the unsuspecting as to the source of a product. I think it is time to look at that old terminology and see if it should not be updated.

As you know and as the record indicates, I have been involved in trade legislation for many years. Title V of the Trade Act of 1984 bears my name and that of the late Senator Scoop Jackson's name as cosponsors.

It is my belief that reasonable conditions can be imposed on the importation of goods and services from abroad without violating GATT international trade principles. Our markets are among the most lucrative in the world. We have the right to insist on human rights considerations from those who desire the accommodations of our markets.

Since 1972 and up to the present, I continue to feel that respect for human rights is essential in the conduct of trade and business. However, it was never intended, in my mind, that title V should be utilized as a permanent bar to the access of our marketplace or a political tool to settle geographical ethnic problems in other countries.

In 1979, before the Soviets invaded Afghanistan, I recommended a trade agreement with the Soviets when emigration from that country reached unparalleled levels of over 55,000 per year. At that point, I thought that title V of the Trade Act was working effectively as we thought it might.

On this point, I would like to say that I commend the efforts of Chairman Gibbons and the committee to advocate, in those cases which are proper, multiyear agreements under title V. To come to the Congress once a Congress is a difficult enough task. To have to come twice in the life of the same Congress is a considerable burden.

I think that trade commitments and planning cannot easily carry on with an agreement as short as 1 year where it is otherwise justified.

However, there are other considerations that relate to human rights. Should America open up its markets to producer nations which permit production under deplorable conditions, which provide inadequate safety to the workers, which provide no compensation to the victims of industrial accidents, no compensation for periods of unemployment, no provision for retirement benefits after extended employment?

Are we to permit the importation of goods produced in filthy conditions which destroy the health of the work force and the community in which production takes place?

There are Bhopals all over the world which threaten the lives of workers and innocent citizens. Should we encourage these practices by purchasing their goods? How much longer can we overlook the human rights of the workers and the citizens from producer countries?

If the goods we purchase from abroad come with these inhumane burdens, it comes at too great a price. America should exercise the right to deny the American marketplace to those who desecrate their countryside and their people with the carnage of production under systems that are indifferent to human values.

There are economic terrorists in the marketplace and they need discipline and they need restraint. The right of workers in a distant country to live a reasonable expectancy is also a human right.

Our producers struggle to become more efficient, but they bear tremendous burdens unknown to our competitors. What is the national cost of workmen's compensation, industrial safety, pollution control, hazardous waste treatment and disposal, unemployment and retirement compensation? What other producers in the world carry the cost of providing equal employment opportunities?

The cost of a homogeneous work force of the same culture is considerably less than the cost of an integrated multiculture work force. Which should be encouraged?

These extra expenses of production in America have to be in the trade equation. They constitute a heavy cost of production in this country.

Are the sound social principles which foster their development in America unsuitable to our trading partners in the rest of the world? There are other discriminating burdens on American industry and the American worker.

Everything produced in America carries the burden of a $330 billion defense expenditure of our Government which must be paid for by the taxpayers and the producers. How much of that outlay represents the cost of defense outside of our Nation? How much of the outlay is made to provide for the Nuclear Shield?

Some experts suggest that as much as 40 percent of these expenditures are spent to support NATO with as much as 25 to 30 percent spent for the defense of Japan and Asia in the South Pacific. West Germany and Japan make a small contribution to this burden—several thousand dollars, for example, for every soldier—but it is probably less than one-tenth of our Government's cost of maintaining a soldier, sailor in these foreign lands.

But the great body of the rest of our trading partners are free loaders on our defense expenditures in their behalf as well as our own.

In establishing ground rules for trade, it would seem reasonable to insist that our trading partners assume a greater share of the defense burden either by increasing their own defenses or by making some tangible contribution to the cost we must bear. In the meanwhile, some effort should be made to calculate that portion of our national defense expenditures for our foreign neighbors and delineate the costs we assume for the benefit of our trading partners.

I am not asking for any kind of legislation. I am asking that we determine what this contribution is and try to get a handle on the dollar value of what we are spending to defend the world.

This calculation would be helpful in trade negotiations and in the developing of bilateral agreements. There is a limitation of the burdens of national defense which our country can sustain for others. There is a limitation as to the extent of a tolerable trade deficit.

Our trading partners must understand these limitations and help us deal with these problems before they break the bank.

Mr. Chairman, I would hope that this committee and the Congress will examine these defense, environment and work place burdens which weigh heavily against the capacity of American industry to effectively compete in the world marketplace. I believe in trade between all nations. I believe that there should be a minimum of restraint on goods of quality and their flow from nation to nation.

Our people and the people of the world are entitled to have the best that can be made. We are also entitled access to the most efficiently produced merchandise.

As I have said here before, trade is the currency of peace. Nations which engage in a huge volume of trade interchange are likely to become more friendly and more interdependent.

Finally, the dialog of commerce, which is in your trust and custody, seeds the passion of peace and understanding among the nations.

Thank you very much.

Mr. PEASE. Thank you very much, Mr. Vanik. We appreciate your testimony.

[The prepared statement follows:]

STATEMENT OF CHARLES A. VANIK
BEFORE THE TRADE SUBCOMMITTEE OF THE
HOUSE WAYS AND MEANS COMMITTEE

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Exporters and importers - the successful operation of any and all business - can live with rules if they are certain of their equal application.

Furthermore, I believe that legislation is long overdue on deceptive labelling and should be corrected. The terminology of trade has not been reviewed in almost thirty years. The American flag and the flags of other nations are improperly draped and wrapped over offshore-produced merchandise. This is not done in the spirit of patriotism or any sense of dedication to our flag, it is done to deceive the unsuspecting as to the source of a product.

As you know, and as the record indicates - I have been involved in trade legislation for many years. Title V of the Trade Act of 1974 bears my name and Senator "Scoop" Jackson's name as co-sponsors. It is my belief that reasonable conditions can be imposed on the importation of goods and services from

abroad without violating GATT international trade principles. Our markets are among the most lucrative in the world - we have the right to insist on human rights considerations from those who desire the accommodations of our markets.

Since 1972 and to the present, I have continued to feel that respect for human rights is essential to the conduct of trade and business. However, it was never intended that Title V should be utilized as a permanent bar to the access of our marketplace - or as a political tool to settle geographical, ethnic problems among our trading partners. In 1979, before the Soviets invaded Afghanistan, I recommended a trade agreement with the Soviets when emigration from Russia reached unparallelled levels of over 55,000 per year. At that point, I thought that Title V of the Trade Act was working effectively, as we thought it might.

However, there are other conditions that relate to human rights. Should America open up its markets to producer nations which permit production under deplorable conditions, which provide no or inadequate safety to the workers, which provide no compensation to the victims of industrial accidents, no compensation for periods of unemployment, no provision for retirement benefits after extended employment? Are we to permit the importation of goods produced in filthy conditions which destroy the health of the workforce and the community in which production takes place? There are Bhopals all over the world which threaten the lives of workers and innocent citizens - should we

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Our producers struggle to become more efficient, but they bear tremendous burdens unknown to our competitors. What is the national cost of workmen's compensation, industrial safety, pollution control, hazardous waste treatment and disposal, unemployment and retirement compensation? What other producers in the world carry the cost of providing equal employment opportunities? The cost of a homogenous workforce of the same culture is considerably less than the cost of an integrated, multi-culture workforce. Which should be encouraged?

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In establishing ground rules for trade, it would appear reasonable to insist that our trading partners assume a greater share of the defense burden, either by increasing their own defenses or by making some tangible contribution to the cost we bear. In the meanwhile, some effort should be made to calculate the portion of our national defense expenditures and delineate the costs we assume for the benefit of our trading partners. This calculation would be helpful in our business trade negotiations and in developing bi-lateral arrangements.

There is a limitation of the burdens of national defense which America can sustain for others. There is a limitation as to the extent of a tolerable trade deficit. Our trading partners must understand these limitations and help us deal with these problems before they break the bank.

I would hope that this Committee and the Congress will examine these defense, environment and workplace burdens which

weigh heavily against the capacity of American industry to effectively compete in the world marketplace.

I believe in trade between all nations. I believe that there should be a minimum restraint on goods of quality. Our people and the people of the world are entitled to have the best that can be made. We are also entitled access to the most efficiently produced merchandise. Trade is the currency of peace. Nations which engage in a huge volume of trade interchange are likely to become more friendly, more interdependent. The dialogue of commerce seeds the passion of peace and understanding.

Mr. PEASE. Mr. Gibbons.

Mr. VANIK. Mr. Chairman, could I repeat what I said that when I came to this committee, as your predecessor, we had a trade deficit of about $22.5 billion; then when I left, our colleague Jimmy Burke, our late beloved colleague, said that I was not doing my job well because it doubled in my administration.

Then I just pointed out that I don't really know what has happened since I left, but you are in a high multiple.

Chairman GIBBONS. Well, the problem is, Mr. Vanik, we inherited your problems and we are trying to deal with them the best we can; but we are going to get it straightened out.

As many people have told us, of course, in this room about 80 percent of the trade deficit is due to the macroeconomic policy this country has been following.

Probably another 10 percent of that 100 percent is due to the fact that we just refuse to export to a lot of people who want to buy our goods. Our Export Administration policy is lousy.

Our tax laws are lousy. They discourage American trade. They unfairly penalize American goods against a value-added system with their rebates, clashing with one income tax system with no rebates.

So the problem of trade deficits, of course as you so well know and have so well and eloquently said here, is a product of a lot of things.

Unfortunately, I missed the first part of your statement in which you were talking about your Vanik-Jackson amendment. Could you go back and kind of hit some of the high spots for me on that?

Mr. VANIK. All I said with respect to that is that I pointed out that in 1979 I had recommended an agreement when we reached the 55,000 level in immigration from the Soviet Union, which to my knowledge represents the highest immigration allowed by or permitted by an advanced country of its best trained and prepared citizens. In history, we have no parallel for that. At that time, I thought we ought to enter into a trade agreement with the Soviets and acknowledge this.

But right after that the Afghanistan war came along and that idea, of course, could not operate.

I also said, Mr. Chairman, that I agreed, first of all, with what you are trying to do in the trade bill now because I think it is a pragmatic approach. It is about as much as we can do in this Congress.

I think it is all in the right direction; but I also expressed my hearty support and encouragement for your effort to go for multiyear agreements to those countries that met the requirements of title V of the 1974 Trade Act.

I feel that that is a good step. I think it is difficult for a trading partner to come before the Congress on an annual review. I think that a serious deliberation once a Congress ought to adequately deal with the issue, particularly among those nations that have developed sound humanitarian policies.

Chairman GIBBONS. One of the problems we have, of course, is with the death of Senator Jackson and your departure from the Congress, we really have no one around here who can lead us away from what both you and Senator Jackson tried to do.

There are many fine and wonderful people in the United States who say, "Well, the amendment should never be changed. It should never be modified."

What do you think we ought to do in light of today's terms about the amendment that you and Senator Jackson put in the bill?

Mr. VANIK. Well, I thought the amendment was good language when we put it in the law in 1974. I still feel that it is a very, very important principle. I would not urge that it be changed.

I would urge, on the other hand, that the committee take some bold initiatives and provide for a less frequent review of those situations that are going well; and that the committee look with favor and really try to make the provisions of the amendment available on a wider base when relationships between our countries are developing into a more favorable scene.

Chairman GIBBONS. One of the problems we have with Russia is that we practically have no immigration from Russia now.

Mr. VANIK. Down to about a few hundred a year, I think.

Chairman GIBBONS. Yes; and it is really almost on a case-by-case crisis basis.

I realize that Russia will probably never let it go to 55,000 as they did in the late-1970's and I realize that our worsening relationships in Libya and our worsening relationships in Afghanistan have all contributed to that.

What do you think we could do now to perhaps encourage the Russians to at least open the door part way?

Mr. VANIK. I think that this is temporary. I don't look for either of these situations to be permanent.

I am hopeful—and I must pray as everyone here does—that the situation with the Libyan problem will somehow clear up. I would also hope that there might be some kind of a favorable resolution of the war in Afghanistan.

I think that the things that we ought to suggest or be talking about are at the end of these problems we can develop a dialog for widening the trade between our nations. I think there are things we can do to hold out inducements for tranquility.

I frankly believe, from what I can determine—and I don't have access to the sources that you all do now—that considerable immigration would be possible from the Soviet Union if there was a quieting of the present problems. I think they were on that course.

I think immigration levels would increase. The lion's share of the trade that has gone on between East and West has escaped America. Our trading partners took advantage of our amendment.

As a matter of fact, they were using our amendment to settle their own resettlement problems. The Jackson-Vanik amendment had application outside of America. The Germans were using it in their relationships with other countries and solving some of their resettlement problems.

They were using our law: it had an international effect and they were taking the benefit of it. They were getting all the trade without having to deal with the amendment.

So I think that there may be an appropriate time soon to suggest to the Soviet Union and the other Eastern bloc countries that when you settle the elements of the present troublesome agenda, we would like to sit down at the table and see if we can work out a

trade agreement which can increase and enhance the trade between our countries.

I think that the plans for that should be made now. I would hope they might be included in the language of your bill in some way because this could have a tremendous influence in helping them solve the other problems.

If they saw language in the trade act that would suggest the avenues that would be open to trading partners if there were not the external conflicts, it might be a help.

Chairman GIBBONS. Well, I think your leadership and your skill would help us a lot there. I would encourage you to work with the members of this staff here and suggest some language. Charlie, we need your help.

You possess a greater insight into it than any of us and your prestige would help us.

Mr. VANIK. Thank you very much. I would like to feel a little bit needed.

Chairman GIBBONS. You are needed, Charlie; you are needed.

Come by the staff and sit down with them, and help develop some language.

Mr. VANIK. Certainly.

Chairman GIBBONS. I think it would be very helpful.

Mr. VANIK. I would be very delighted.

Mr. PEASE. Mr. Schulze?

Mr. SCHULZE. Thank you, Mr. Chairman.

I would like to join in welcoming our former chairman back to the committee. It is always a pleasure to see you, Charlie. It is nice to have you here and hear your testimony.

I think you remember I used to kid you about the size of the trade deficit when you were chairman and say, "Charlie, you are very successful: the trade deficit is going up and up and up all the time that you have been chairman."

Well, I have not started kidding Sam because it is so high I don't want to start doing that. [Laughter.]

It was low enough that I could kid you about it, but I don't think it is anything to joke about anymore.

Charlie, in reference to your testimony, I have a bill which would call for more bilaterals. It seems to me that we have been the economic engine with our international trade that pulled the rest of the free world along; and we have sacrificed some jobs, as you have indicated; and we do have higher standards.

Built in through those higher standards in the workplace is a bias for other countries which do not have standards as high. So it seems to me that if we negotiate a bilateral, we could say, "Yes, you have an advantage in this area; but we have an advantage in computers," or other refined goods, "and we are going to buy your textiles, but we want you to buy our computers." Let's have some kind of golden rule.

Now, in my legislation, which people view as kind of harsh, I say that as a trading nation if you have not developed a bilateral with us within 5 years then we put on a 20-percent surcharge; but that is really the hammer hanging over the situation to try to force some action, in effect say "If you want access to our markets, you have to develop fair and rational method of trading with us."

I wonder if you are aware of it and if you have any thoughts on more bilaterals at this point in our trading history.

Mr. VANIK. As I suggested in my statement, I think that when we discussed the bilaterals these relevant issues ought to be put into the package. I think without the compulsion of statute some declaration by this committee to the effect that you are looking at the differences would stir up our trading partners.

The theme of my statement is that if you could suggest that we are going to be concerned in America about the human rights of your workers, the human rights of your productive system.

Mr. SCHULZE. How would you quantify that?

Mr. VANIK. Well, if you wanted to go all the way you could have another title that would just include that as a human right.

I don't think the committee can specifically write out the format, but you could say that in appropriate situations in the determination of the President or whoever the trade personnel is, if it appears that any country is neglecting the human rights of its workers, its workplace or neglecting its population in a production area, action could be taken.

Mr. SCHULZE. Would you make them come up to our standards, the OSHA standards?

Mr. VANIK. No. We cannot expect them to come to our OSHA standards, but we could have language that says if there is a showing of manifest disregard of human rights in these categories—in other words, I take the Jackson-Vanik amendment and extend it to other principles of humanity.

Mr. SCHULZE. I think you and I were in China one time when we went to a jade factory and there were people with little machines carving the jade, and they were about 3 feet apart in, let's say, a 10-by-12 room.

Mr. VANIK. It was a very bad situation.

Mr. SCHULZE. There were 14 or 16 people in there working.

Mr. VANIK. Yes.

Mr. SCHULZE. Is that the kind of condition you are talking about? In other words, could we go in there and dictate, and say "You cannot have this many people in the room"?

Mr. VANIK. I am thinking about situations even more deplorable than that, and they exist in many producing centers. I don't know whether that is a good example or not. I would not try to define it.

But I would think that just a broad reference could be made of a situation of terribly abusive neglect on the part of a producing country that require some sanctions.

Mr. SCHULZE. Do you want to give me an example?

Mr. VANIK. Well, the Bhopal situation. I mean, it could turn up that some of the things that are produced abroad and sold here may be produced under conditions of gross disrespect to humanity.

Mr. SCHULZE. You mean, after the leak?

Mr. VANIK. Before and after the leak. A situation like that might be so bad that we might just have to say, "Well, look, we can threaten shutting down a market for your goods unless your producers shape up to minimum standards.

Mr. SCHULZE. Would you cut off India because they don't have high enough standards?

Mr. VANIK. No, no. I don't think you would cut off a whole country, but you may relate it to certain products. You could exercise it against certain products, certain areas.

I don't think you want to have an arbitrary thing floating out there which would destroy the stability of the trading rules. But we must give warning of our intent to act if deplorable, unsafe conditions exist.

As I said, you have to have rules that people understand; and I think it is time for America to say, in a general way, that these things matter to us and we are concerned about the conditions under which things are produced, and we may take an action if circumstances warrant.

Mr. SCHULZE. It seems to me we now have on the books something about the use of slave labor, which was mainly oriented toward Communist countries; but it has never really been implemented, has it, because I understand there are products which are made in prisons and so forth.

Mr. VANIK. I don't know that we deal with prison-made goods from abroad, but we do have the reference to slave labor.

Mr. SCHULZE. Should we try to implement that first? Would you say that is the highest category of abuse?

Mr. VANIK. There are those who say slave labor produces everything in Russia. That is a political opinion. However, I believe producing—we would find those conditions in that area of the world probably much superior to things that we might find produced in Malaysia, the Far East in the subcontinent.

I think that the emerging countries are much more likely to be in violation of this kind of concept than the developed nations. I am concerned here with filthy, unsafe production of goods for our markets.

Mr. SCHULZE. Charlie, what do you think about some kind of a border tax? When do you think that we should start looking at our trading partners, how their tax structures relate to international trade, and either try to jaw-bone them into harmonizing with us or we take some small steps to harmonize with them?

Have you given any thought to that?

Mr. VANIK. Well, I would say at the outset that I have never believed, particularly since our good former colleague, Al Ullman, came out to his distress for the value added tax proposal that America's going to be comfortable with that kind of a burden.

Mr. SCHULZE. Well, just say politics aside.

Mr. VANIK. Yes; politics aside.

Mr. SCHULZE. If international trade is going to grow—and I think we both agree in the next 10 or 20 years its growth will be phenomenal—should we not make some kind of an effort to ease the complicated burdens of cross-nation taxation and give our domestic producers, if not a level playing field, at least some kind of a fair shot and not, say, a 10- or 20-percent disadvantage when they start off?

Mr. VANIK. On that very subject, if you will recall at one point I recommended that we consider some allocation of the defense burden—you know, some kind of thing that would help ameliorate the distance between American production and off-shore production—because of the concentration of the defense burden here.

One of the steps you go in that direction is to get it calculated. This committee has the resources to get that cost calculated.

I think one of the things the committee ought to do is calculate all of these costs. What does workmen's compensation cost in America? What does it cost in Malaysia?

Mr. SCHULZE. That is, in effect, what I am getting at because included in the sale of a widget from here to Europe are those costs, are those labor costs for higher labor standards, Social Security; the costs of our Government and what we do for the people.

But with the product that comes over the other way this is eliminated. That is why I say some form of border tax, even coming in, would have an effective equalizing factor.

Do you think that the term "value-added tax" is so volatile that whether it is right or wrong it is not going to happen?

Mr. VANIK. It is not feasible. I would say it is not feasible.

Mr. SCHULZE. For political reasons or economic reasons?

Mr. VANIK. Both.

Mr. SCHULZE. But we should really try to forget the political considerations if we could for the country in the long run.

Mr. VANIK. We don't know where you are going to lead us with H.R. 3838, you know.

Mr. SCHULZE. It may not pass.

Mr. VANIK. It may not, but we don't know where you are going with that. So it is very, very difficult.

Mr. SCHULZE. Maybe it is a little off the subject.

Do you have any thoughts on the trade implications? I was disturbed by the lack of consideration of trade implications of H.R. 3838. Do you have any thoughts on that?

Mr. VANIK. I am fearful of a massive tax change and the effect that it can have on trade. There is a lot of concern out there. People like one part of the bill, they don't like another.

What I think is going to happen—and you did not ask me for this opinion—if this bill should become law, it will eventually lead the country to a flat tax. The minimum tax will become a flat tax and everybody will probably be paying close to 35 percent.

That is an easy valve for you folks to change here in Ways and Means. If you need more revenue, you can just turn up the tax on the minimum.

Mr. SCHULZE. I tried to change that minimum tax before it left here.

Mr. VANIK. I know.

On the other point, on the border tax issue, I would just like to say that I don't advocate a specific approach at this point. I would like to see the information resources utilized. You have the staff of the Trade Commission to put into viable projects.

I think that if you can evaluate the cost of these factors, which are a special burden on American industry, then I think you are going to expose our trading partners to some new consideration.

They are going to be comparing their costs and they are going to be a little bit more aware of what our problem is, and they may be easier to deal with on bilaterals. But before you can come to any real conclusions on border tax you need the information.

Mr. SCHULZE. I think they would take better advantage of it.

Mr. VANIK. I think the information will solve the problem.

Mr. SCHULZE. I thank the gentleman. It is nice to see you again. I wish you the best of luck in the future.

Mr. VANIK. Thank you very much.

Mr. SCHULZE. Thank you, Mr. Chairman.

Mr. PEASE. Charlie, before I turn the microphone back over to the chairman, I just wanted to commend you for your comments about human rights as a factor in trade.

You are certainly a pioneer in that area. I just wanted to direct your attention to a new bill that I introduced about 2 or 3 weeks ago which would allow the repression of labor rights to be considered as an unfair trade practice.

It would not be automatic, but in those countries and in those industries in Third World countries where the violation of worker rights—safety or health, or whatever—was especially egregious, an American firm could petition under section 301 to have that declared an unfair trade practice subject to the usual procedures of section 301.

I think that is a worthwhile procedure. I think, in general, you are sensitive and supportive of that concern.

Mr. VANIK. I am glad to know about your proposal, Mr. Pease. I think that it is a very worthwhile approach; and I think it is time to get our trading partners alert and on notice that we are moving into a sensitive analysis of these problems.

The mere fact that we are discussing it, I think, will have a salutary effect on our trading partners; and I think your bill is one that really should merit the serious attention of this committee.

Mr. PEASE. Let me send you a copy of it so you can be aware of it.

Mr. VANIK. Thank you.

Mr. PEASE. Thank you very much, Mr. Chairman.

Mr. VANIK. Gentlemen, I want to thank you very much. I wish you well on this tremendous undertaking with this bill; and I know that you are going to do all that can be done in the limitations of time in this Congress.

Thank you very much.

Mr. PEASE. Thank you, Mr. Vanik.

This concludes today's hearing. The last two witnesses we heard, at the request of Mr. Frenzel, between 12:30 and 1:00.

Mr. FRENZEL. Thank you.

Mr. PEASE. The subcommittee will meet again tomorrow morning at 9:30.

[Whereupon, at 2:36 p.m., the subcommittee adjourned to reconvene at 9:30 a.m., April 17, 1986.]

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TRADE REFORM LEGISLATION

THURSDAY, APRIL 17, 1986

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

Chairman GIBBONS Good morning. We have a fine group with us today. We will start with Mr. Charlie Rose. Is Mr. Rose here?

[No response.]

Chairman GIBBONS. Well, we will go with Ms. Kaptur. Marcy. First of all, Ms. Kaptur, we welcome you. I know of your deep and intelligent, abiding interest in this subject, and look forward to hearing from you.

STATEMENT OF HON. MARCY KAPTUR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Ms. KAPTUR. Thank you, Mr. Chairman, and I want to commend you for receiving so many Members of Congress, and witnesses before this committee, and we thank you for your long-time leadership in the field of trade, and it is a real pleasure to be here before you today.

Chairman GIBBONS. Thank you.

Ms. KAPTUR. I do so out of my deep concern that the necessary economic investments and industry and worker adjustments, and trade initiatives, that must occur to keep America competitive, and the leader in the industrial and "Free World" will not occur fast enough to keep America at pace with our global trading partners.

Therefore, I fully support your efforts to reform the trade laws of our Nation. I would like to share with you this morning, if I might, several concerns I hold as a representative of a district that is both industrial and agricultural.

Between 1979 and 1984, over 11½ million American workers lost jobs due to plant shutdowns, or relocations, rising productivity, or shrinking output. Since 1978 in my district, we have lost over 25,000 manufacturing jobs, and thousands more are at risk, even as I sit here and testify today. Although manufacturing accounts for less than 20 percent of all U.S. jobs, it is here where the international competition is keenest. What I have done in my testimony—and I will submit it for the full record—I have identified five or six issues that I really hope that this trade bill deals with. I have read it and I want to make some suggestions this morning that I think

might strengthen or modify it a bit, the first dealing with U.S. industry adjustment.

How do we, as a nation, modernize and adjust our industrial and defense bases fast enough to meet the competition in so many threatened industries—machine tools, steel, semiconductors, textiles, motor vehicles, shipping, and others?

I have believed, for some time, that this country lacks a cohesive adjustment policy, one in which all interested parties—management, labor, and government—could rally behind and really work together for policy improvements.

Now what are America's competitors doing to speed adjustment in their nations? During our trade mission to Japan last year, I learned that Japan's depressed industries law literally protects import-threatened industries, and provides a systematic process for reinvestment, as well as down-sizing overcapacity. Their adjustment process is probably an anathema in America to our way of doing business, yet it is instructive in that it tells us what the world economy has indeed become, a complicated place where survivors will be those who take risks to meet challenges. One mechanism for industry modernization that might be better adapted, and you deal with it in your bill under subtitle B, is that in which U.S. industries that are struggling with import competition have the option to file a petition with the U.S. Government requesting relief in the form of tariffs or quotas.

I am particularly interested in page 46, line three. Usually in this process, they are asked to present a comprehensive strategy to facilitate adjustment within the industry.

In the draft you are considering, it is only an option that such a plan be delivered. I guess I ask the question, if our Government is going to offer tariff protection to these industries, why not require that they live up to their part of the bargain?

If we are going to regain competitiveness in world markets, we must make temporary government assistance as effective as possible.

We cannot allow industries to leave a period of shelter in the same condition as when they petitioned for assistance. Therefore, I strongly recommend that the industry adjustment plan be mandatory rather than optional.

I also recommend that the committee take a serious look at the proposed Council On Industrial Competitiveness, H.R. 2373, that has been cleared through the Banking Committee, a subcommittee of which I am a member, and that some of its concepts be made a partner with your bill, and the activities of the International Trade Commission in providing a solid and strong mechanism to carefully review and structure these adjustment processes.

Chairman GIBBONS. Could I interrupt you there?

Ms. KAPTUR. Yes, Mr. Chairman.

Chairman GIBBONS. And say this: That we are trying to move along on parallel tracks with the other committees, and one reason we have avoided going over and picking that up is we thought they would bring that perhaps to the Rules Committee.

If you would check with your subcommittee chairman, or chairmen, and see what their plans are, I would appreciate it, so that we could have better coordination.

Ms. KAPTUR. All right.

Chairman GIBBONS. You have expressed an interest in it, and, you know, we ought to be all working together. I would ask our staff to cooperate on this and make sure that we all are headed in the same direction in this particular area. Apparently, Mr. LaFalce is planning something in that area.

Ms. KAPTUR. Yes; we are marking up this afternoon, Mr. Chairman.

Chairman GIBBONS. Good; fine.

Ms. KAPTUR. Probably around 10 o'clock we are going to start.

Chairman GIBBONS. All right.

Ms. KAPTUR. Thank you for that. I will communicate that to the chairman when I go back.

Chairman GIBBONS. Fine.

Ms. KAPTUR. Frankly, I also believe that the administration's desire to amend our antitrust laws should be linked to the broader industry readjustment initiatives that you are considering, and I think that might be an interesting conversation when that one occurs.

Chairman GIBBONS. Yes; I have had some conversations with some of the other Members on the Judiciary Committee and we have got some problems there but we are working on it.

Ms. KAPTUR. I can imagine. Mr. Chairman, I just wanted to move on to an area that is not discussed in the bill, but one that I know that you will mull over and you have been thinking about, and that deals with foreign investment in the United States and the consequences to other companies, what I call supply line companies, and I think the pace at which these foreign interests are gaining further U.S. market share and downstream supply lines must be addressed by your bill.

The rate at which foreign investment is occurring in the United States in our manufacturing base, and the ripple effect it is having on our supplier industries is truly historic. Foreign investment in the United States generally results in new capital facilities, like the Honda plant in Marysville, OH. Yet how is this type of investment different than a typical Ford plant? It is different because top management decisions are made in a foreign nation and profits flow back there.

In addition, research and development, as well as the high value-added end of production remain on foreign soil, and equally important, these plants, once they are located, do not develop export markets outside the United States.

Thus, they behave like colonial installations on our soil. We are now seeing foreign supplier companies following——

Chairman GIBBONS. Of course you know, that is what we have been trying to get our plants to do. We have been objecting to nations imposing upon our plants that are located in foreign nations, a requirement that they must export because it—well, that has been our policy for some time.

You have presented us with a dilemma there. We have either got to change one policy or the other. We will mull that one over

Ms. KAPTUR. I think I am going to address that down here in the next paragzaph, if I might.

Chairman GIBBONS. All right.

Ms. KAPTUR. We are now seeing that foreign supplier companies are following the primary manufacturing companies in so many areas—glass, and various parts, bearings—at the same time that U.S. companies literally have to beat their way into the door even to bid on supplying parts to these foreign firms.

We know, for example, that last year foreign auto interests held over a $14 billion share of the United States' auto market, and if you add parts to that it is probably like a $25 billion U.S. market share; yet they purchased less than $200 million, or less than one percent of American-made parts in that assembly

Thus, I am fully supportive of Congressman John Bryant's bill, H.R. 2582, which would have been introduced in his own committee, which is Energy and Commerce, which would require full disclosure of the interests behind all major foreign investment in the United States. It would allow new foreign investment here only to the extent that the policies of the foreign investors home countries are reciprocal.

And I think that might be the key word here—reciprocity—in this whole investment area. In addition, I think—for example—that the United States should require, when dealing with a country like Brazil, where these kinds of export markets are required, that these companies develop export markets outside the United States, just as the Brazilian policy does. And that we require them to utilize a certain share of U.S. made parts in the assembly process, once a foreign investor holds a certain percentage share of the U.S. market.

So I think part of the way out of the box—we cannot move the entire world only in the direction that we want to move, but perhaps reciprocity and bilateralism might be better used in trying to deal with this very complicated issue of foreign investment.

And I might just point out a problem here. The long-term consequences of a foreign-owned firm pulling out of a community with little forewarning can be devastating, and I have a very personal example of that.

No law on the books today in our country prevents or delays this type of withdrawal, to give the community some sort of notice to adjust.

In my own community, the American Motors Corp./Renault, the largest employer in my district with over 8,000 employees, has threatened to leave unless we literally give them a new plan in conjunction with the State, and they have set off a bidding war between several States. It is impossible to determine from the French Government—and I have tried—which owns Renault—but claims it has no real direct role in company management, exactly what Renault intends to do with its U.S. parent companies, and this really puts our community in a very terrible position. And though the handle of foreign investment is jeweled, it is a sword with many sharp edges, Mr. Chairman. And I would just ask that perhaps in your consideration of this bill, your committee give some attention to this whole situation of foreign investment, where our entire economic livelihood is being controlled by someone else, and we have very little opportunity to impact that process

I might move on just to talk about the bilateral versus multilateral approaches that I hope the trade bill will deal with.

I know you are talking about that, and I also recognize that almost 70 percent of our trade problems are with about six countries, and I would hope that the provisions in the trade bill, when ultimately developed, will deal specifically with those five or six countries where we have the largest imbalance, and I am hoping that the bill will distinguish between the world as it existed in 1946, when we operated under an Anglo-American model of trade, and the world as it exists today. New nations and new economic systems have developed over the last 40 years, and their behavior patterns fall outside the bounds of existing trade laws, causing these nations' products to end up on our shores and in our marketplace with undue advantage.

For example, the centrally planned economies of Eastern Europe and the U.S.S.R., as well as Yugoslavia, comprise about 20 percent of U.S. trade, most of it in barter, and it results in a situation where—for example—the most-favored-nation status allows Yugo cars to be sold in Toledo, Ohio for $3,990, when in fact the workers in Yugoslavia do not earn anything above poverty wages. There are no collective bargaining rights; there is no free enterprise.

And I think something is wrong with a system which allows that kind of trade back and forth, which has a serious impact on one industry in this country, which is in a very serious competitive bind, and I would just hope that the committee would give some attention to those centrally planned economies, the impact of their products in the marketplace, mixed economies such as Mexico—and I know you are dealing with that with the natural resource subsidy part of the bill, which I commend you for, because I think that that type of abberation in the marketplace is causing many of our businesses to be threatened.

And I would also hope that attention would be given to Socialist economies like France and Sweden. I mentioned the Renault example, where they can do all sorts of things and have an impact on various products. As well as the planned market economies of Korea, Japan, Singapore and Taiwan, which strategically blend the power of the state with the power of the marketplace, and operate outside the GATT, because of the way in which their regulations, and their pattern of behavior are organized. And I am hoping that the trade bill that is ultimately passed recognizes the different economic behavior of these different types of nation-states that are now operating out there in the world, and provide the United States with reciprocal treatment.

On the trade data issue which I have summarized in more detail here, I have my own bill which attempts to deal with the weakness of the trade data gathered by the U.S. Government agencies, and makes it difficult for those of us who are involved with many of these nations to negotiate and monitor trade agreements with foreign nations.

For example—and I just wanted to point this out to you, Mr. Chairman—after I participated in that congressional trade mission last year to Japan, Prime Minister Nakasone promised that Japanese firms would purchase $7.3 billion worth of U.S. merchandise by the end of this month, which would be a small increase over their previous year's total.

And of course we have been monitoring their promises in the auto parts area, but who, in the U.S. Government, is monitoring whether or not that complete promise is being kept? No one. But I can guarantee you that the Japanese know exactly how much they have purchased and in which commodity areas.

I can also guarantee you that there has been almost no progress in the auto parts area. A major trade data gathering weakness is in the area of auto parts. Frankly, when you are asked in this country about certain product areas, they say go to the Japanese embassy, they have the best information on what is happening in the U.S. marketplace.

And I think that it is very difficult for us to argue a case when the other party's data is superior. A further example of that would be in our foreign trade zones. We have two of those in the district that I represent

No reliable sources of data, anything beyond speculation can be provided to me on what is really going on in those foreign trade zones.

It seems that everyone in the Federal Government is in charge of some aspect of trade data gathering, but no one really does a thorough analytical job, product line by product line of what is going on out there.

Thus I have introduced H.R. 4340 that would centralize all data gathering functions in the Office of the USTR. It would strengthen their data gathering capacities, it would be comprehensive and timely, and would also account for such things as subsidies by other governments, market penetration ratios, nation of origin for various kinds of imports, et cetera, and I would truly ask you to take a look at that, Mr. Chairman.

There is one other bill I wanted to mention here that Congressman Howard Wolpe and I have introduced, that deals with the integrity issue in trade. The Judiciary Committee really has jurisdiction in this matter. The purpose of the bill is to make sure that the U.S. Government maintains its own integrity in the trade-making process, and it would require, that in order to ensure the effectiveness and integrity of our national institutions, it would probibit any top-level U.S. official firm representing or advising a foreign principal, in any transaction wich the U.S. Government for 10 years after leaving Government service.

I do not think that we can keep competent people in government, and this is one of the complaints of my business community, that every time they come to Washington, there is somebody else sitting behind the desk over at USTR, or over at the ITC.

The fees on the outside, for people who have worked for the Government, can be 5 or 10 times as much as they earned when they worked for the U.S. Government. If they merely leave the U.S. Government, they can average about $300,000 per client.

I think it really works against integrity within the Government of the United States, and I think that practice should be stopped, and I hope that our legislation will be a companion piece to the omnibus bill that you are presenting, or will be presenting to the full House very soon. And I want to thank you, Mr. Chairman, for the opportunity to come before you and hit on some of the major points that I am concerned with. I have no doubt that you are one

of the most intelligent and longstanding Members of this committee, and one of the favorite people I like to talk to about trade issues, and I am really grateful for you sitting through all these reams of witnesses here over the last several weeks, and I wish you much success in this bill.

[The prepared statement follows:]

TESTIMONY

OF THE

HONORABLE MARCY KAPTUR

APRIL 17, 1986

BEFORE

THE SUBCOMMITTEE ON TRADE

COMMITTEE ON WAYS AND MEANS

Mr. Chairman and Members of the Subcommittee, I want to thank you for the opportunity to appear before you today. I do so out of my deep concern that the necessary economic investments, industry and worker adjustments, and trade initiatives that must occur to keep America competitive, and the leader of the industrial and free world, will not occur fast enough to keep America at pace with our global trading partners. Thus, I fully support your efforts to reform the trade laws of our nation.

I would like to share with you several concerns I hold as a Representative of a District that has a port city and is both agricultural and industrial. Between 1979 and 1984, 11.5 million American workers lost jobs due to plant shutdowns or relocations, rising productivity, or shrinking output.

Since 1978, over 25,000 manufacturing jobs have been lost in my district; thousands more are at risk even as I testify today. Although manufacturing now accounts for less than 20 percent of all U.S. jobs, it is here where international competition is keenest. Nearly half of all displaced workers worked primarily in manufacturing industries, especially those hard hit by international competition.

U.S. INDUSTRY ADJUSTMENT

How do we as a nation modernize and adjust our industrial and defense bases fast enough to meet the competition in so many threatened industries -- machine tools, steel, semiconductors,

textiles, motor vehicles, shipping, and others? I have believed for some time that this country lacks a cohesive adjustment policy, one which all interested parties -- management, labor, and government -- could rally behind and work together for policy improvements.

Now, what are America's competitors doing to speed adjustment in their nations? In Japan, the Depressed Industries Law literally protects import-threatened industries and provides a systematic process for reinvestment as well as downsizing overcapacity. Their adjustment process is probably an anathema to the American way of doing business. Yet, it is instructive in that it tells us that the world economy has indeed become a complicated place where the survivors will be those who take risks to meet the challenges.

One mechanism for industry modernization that might be better adapted is Subtitle B, in which U.S. industries that are struggling with import competition have the option to file a petition with the U.S. government requesting relief in the form of tariffs or quotas. They are usually asked to present a comprehensive strategy to facilitate adjustment within the industry. In the draft you are considering, it is only an option that such a plan be delivered. If our government is going to offer tariff protection to these industries, why not require that they live up to their part of the bargain? If we are going to regain competitiveness in world markets, we must make temporary government assistance as effective as possible. We cannot allow industries to leave a period of shelter in the same condition as when they petitioned for assistance. Therefore, I strongly recommend that the industry adjustment plan be mandatory rather than optional.

For example, the centrally planned economies of the USSR and Yugoslavia comprise 20% of world trade, much of it in barter. Most Favored Nation Status allows Yugo cars to be sold in Toledo, Ohio for $3,990. Workers in Yugoslavia who earn poverty wages, have no bargaining rights and who work for a state owned company displace U.S. auto workers. Something is wrong with this system.

In mixed economies, such as Mexico, the government owns most of the production inputs, like natural gas in fertilizer. The finished products are then sold at reduced prices within our borders. Socialist economies, like France and Sweden, heavily subsidize and finance production and therefore gain undue market advantage. Finally the planned market economies of Korea, Japan, Singapore, and Taiwan, strategically blend the power of the state with the power of the marketplace, and operate outside the General Agreements on Tariffs and Trade. The trade bill that ultimately is passed must recognize the different economic behavior of those nation states and provide the U.S. with reciprocal treatment.

TRADE DATA

The weakness of trade data gathered by U.S. Government agencies makes it difficult to negotiate and monitor trade agreements with foreign nations. For example, after I participated in a Congressional trade mission to Japan last year, Prime Minister Nakasone promised that Japanese firms would purchase $7.3 billion worth of U.S. merchandise by the end of April 1986, which would be a small increase over the previous year's total. Who in the U.S. Government is monitoring whether or not the promise is being kept? No one! I can guarantee the Japanese know exactly how much they have purchased and in which commodity areas. I can also guarantee you there has been almost no progress on auto parts purchases.

In addition, the U.S. should require, as does Brazil, that these companies develop export markets outside the U.S., as well as utilize a certain share of U.S. made parts in its assembly process, once a foreign investor holds a certain percentage of the U.S. market.

Furthermore, the long-term consequences of a foreign-owned firm pulling out of a community, with little forewarning, can be devastating. No laws on U.S. books prevent or delay this type of activity to allow the local commuunity to adjust. In my own community, AMC/Renault, the largest employer in my district, with 6,000 employees, has threatened to leave unless given a new plant. It is impossible to determine from the French Government, which owns Renault but claims it has no direct role in company management, exactly what Renault intends to do with its U.S. parent company. Though the handle of foreign investment is jeweled, it is a sword with many sharp edges. Your careful review of this situation would be much appreciated.

BILATERAL VS. MULTILATERAL APPROACHES

The trade bill should include reform on both a multilateral and a bilateral basis. Almost 70% of our trade problems are with only six countries. Therefore, provisions should be included which deal specifically with these bilateral imbalances.

The bill must also distinguish between the world as it existed in 1946 and as it exists today. In 1946, political economies were very different and trade was based on an Anglo-American model. New nations and new economic systems have emerged over the past 40 years that fall outside the bounds of existing trade laws causing these nations' products to end up on our shores and in our marketplaces with undue advantage.

I also recommend that the proposed Council on Industrial Competitiveness, H.R. 2373, be made a partner with the International Trade Commission in providing a mechanism to carefully review and structure these adjustments. Frankly, I believe the Administration's desire to amend our anti-trust laws also should be linked to broader industry adjustment initiatives.

FOREIGN INVESTMENT AND SUPPLY LINE CONSEQUENCES

Next, I believe the pace at which foreign interests are gaining further U.S. market share in downstream supply lines must be addressed by your bill.

The rate at which foreign investment is occurring in the U.S. in our manufacturing base and the ripple effect it is having on our supplier industries is truly historic. Foreign investment in the U.S. generally results in new capital facilities, like Honda in Marysville, Ohio. Yet, how is this type of investment different than a typical Ford plant? It is different because top management decisions are made in a foreign nation. In addition, research and development, as well as the high value-added end of production, remains on foreign soil. And equally important, these plants do not develop export markets outside the United States. Thus they behave like colonial installations on U.S. soil.

We are now seeing foreign supplier companies following the primary manufacturing plant -- in glass, engines, bearings and other parts, when at the same time U.S. companies literally have to struggle even to bid on supplying parts to these foreign firms. Last year, foreign auto interests held a $14 billion share of the U.S. auto market, yet purchased less than $200 million, or 1%, of U.S. made products on that assembly. Thus I am fully supportive of Congressman John Bryant's bill, H.R. 2582, which would require full disclosure of the interests behind all major foreign investment in the U.S.. It would allow new foreign investment here only to the extent that the policies of the foreign investors' home countries are reciprocal.

Let me mention another data gathering weakness. I have conducted exhaustive research to obtain accurate figures on the import and export of automotive parts. The best figures are kept by the Japanese MITI. It is difficult to argue a case when the other party's data is superior.

What about the amount of foreign goods coming into U.S. Foreign Trade Zones? No reliable sources can provide data based on anything beyond speculation. It seems everyone in the Federal Government is in charge of some aspect of trade data-gathering, but no one really does a thorough analytical job. Thus I have introduced H.R.4340 that would centralize all trade-data gathering functions in the Office of the United States Trade Representative. The data would be comprehensive and timely and would account for subsidies by other governments.

It would provide market penetration ratios and nation of origin for imports. It would keep running tabs on exchange rates, labor market and wage information, and other pertinent trade data. In essence, it would assure complete, accurate, and timely economic and trade data for U.S. trade negotiators, Congressional trade missions, and especially for U.S. businesses.

INTEGRITY

A further concern I would like to mention is technically under the jurisdiction of the Judiciary Committee which will hold hearings in mid-May. But the issue is intimately related to your efforts on trade. The intense lobbying efforts by foreign governments and foreign economic interests in Washington are a growing impediment to maintaining the integrity of U.S. trade policy-making. These lobbying efforts are often

successful because foreign interests are hiring as their agents former top-level U.S. Government officials who have access to special information and contacts among those who implement America's trade, economic, defense and foreign policies. In fact, often when trade experts testify before Congress, they don't even have to identify who they presently are working for. A bill I have introduced along with Howard Wolpe, H.R. 3733, has one simple objective: TO INSURE THE EFFECTIVENESS AND INTEGRITY OF OUR NATIONAL INSTITUTIONS BY PROHIBITING ANY TOP-LEVEL U.S. OFFICIAL FROM REPRESENTING OR ADVISING A FOREIGN PRINCIPAL IN ANY TRANSACTION WITH THE U.S. GOVERNMENT FOR 10 YEARS AFTER LEAVING GOVERNMENT SERVICE. We can't keep competent people in government when fees on the outside per foreign client can run as high on average as $300,000 per client. It is wrong for people to leave the government, after having prepared cases in the trade area, and go directly to work on behalf of the very foreign interests they adjudicated when in the government of the United States. This practice must be stopped and I would encourage this Committee to move this legislation as a companion to the omnibus trade bill.

Further, in the trade bill you are drafting, several trade advisory groups are proposed. In most cases, the legislation only mandates the area of expertise in which the advisors should be knowledgeable. Unfortunately, this leaves membership open to many individuals actually representing foreign interests. Therefore, I recommend that this legislation prohibit those individuals from serving on such review boards who have foreign connections or who receive substantial direct or indirect funding from foreign organizations.

Again, I thank you for the opportunity to come before you to offer these essential extensions to the trade bill that will [illegible] through the House of Representatives in the very near future. I offer you my earnest support and assistance in designing a comprehensive trade policy that will level the playing field for America in the global marketplace. I would welcome any questions you or members of the Subcommittee may have.

Chairman GIBBONS. Let me assure you, Ms. Kaptur, that the feeling is reciprocal, and well earned on your part. I admire the skill and tenacity with which you approach the subject.

We are in a difficult situation. We have not found an adequate way to deal with the nonmarket economies, and those that have very mixed economies. I realize that most nations on Earth are much more highly socialized than we are, and, it is that that makes it difficult for us to figure out a solution. We just do not keep the books the same way, and essentially, our products are based upon a bookkeeping system, dumping prices, and everything else. Pricing, sometimes, in a nonmarket economy does not mean anything because they tend to distribute products on the basis of what they think is need, rather than the market system we follow.

So we have a very complex problem, and unfortunately, the administrations—and I would use the plural—have never come up with a suggestion as to how we ought to deal with them.

Everyone decries the current system, but nobody has thought of a better one. What you say about the Yugo automobiles is the same kind of problem. We could charge them with dumping, if they were selling them in this market at less than they sell them in their home market, or less than their price, their constructed price. But when we get to looking at what they are doing in other markets, they are rationing them in other markets, and they are giving away on a basis of priorities that they have, and price has very little to do with the situation. And when they bring them into our market, they sell them on the basis of a price that we think is very unrealistic.

I hate to sound this pessimistic, but we just have not found an appropriate way to deal with them. We may have to come up with something brand new. We have been pleading for everyone to give us a suggestion.

Frankly, we do not get many suggestions, but we will look at anybody's suggestion as to how to deal with this problem.

Ms. KAPTUR. All right, Mr. Chairman. I would give you all the support that I can in that area, and would attempt to come back with something more concrete. I just wanted to suggest that area, today, that needed special attention.

Chairman GIBBONS. You have suggested a number of very good ones there, and I will look over your written statement, and without objection, your written statement, and all other written statements today will be included in the record immediately following the witness's oral remarks.

Ms. KAPTUR. Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Frenzel.

Mr. FRENZEL. Thank you, Mr. Chairman. I want to thank the witness for her excellent testimony, and assure her that the "comings and goings" here are not our typical performance, but trade is consuming, in lots of ways, our attention, and your testimony will come to the attention of all the members of the subcommittee, and it is just that this is a very busy period for us.

And I would comment further, when the chairman says that that bill should be under your committee—what we are trying to do is meet the Speaker's deadline, and we do not want a situation where

our committee has to review your bill under joint referral, or that they have to refer ours.

The scheme is I guess to "marry them up" in Rules, into one, or into an amalgamation, and that will save time. At least that is what the Speaker said.

Ms. KAPTUR. I do not know if the gentleman was here when I stated to the Chair earlier, that I really want to thank this committee, and this subcommittee, for opening yourselves to the other Members of Congress who are extremely interested in this issue, and I can imagine what you must be receiving. I think a hundred Members, minimum, wanted to testify before you. So I want to thank you for your willingness to listen to us.

Chairman GIBBONS. We only picked the best.

Mr. FRENZEL. We are in your debt, because everyone that has come in here has presented excellent testimony. Every member of the subcommittee does not agree with every witness, but each one brings a special point of view, some special experience, as you did, with the company that is threatening to leave the district. We are grateful to you and thank you very much for your testimony. I yield the balance of my time.

Chairman GIBBONS. Mr. Schulze.

Mr. SCHULZE. Mr. Chairman, thank you. I, too, would like to express gratitude to our colleague for excellent testimony. It will be given serious perusal. I join in the remarks of the gentleman from Minnesota in stating that all the testimony on this issue has been enlightening, even though we have been involved with trade issues for a decade or more, and we are learning every day and we appreciate your insight.

Chairman GIBBONS. Thank you, ma'am.

Ms. KAPTUR. Thank you, Mr. Chairman.

Chairman GIBBONS. Appreciate it. Our next witness is Mr. Wyden, and then, after that, Mr. Rose.

STATEMENT OF HON. RON WYDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WYDEN. Thank you very much, Mr. Chairman, and members of the committee. First of all, Mr. Chairman, I, too, want to extend my appreciation for all the help that you have given to me in the past on trade issues, and also thank the gentleman from Minnesota, Mr. Frenzel.

The bill that I want to focus on specifically today, that I have introduced, gives us a chance, in my view, in a concrete, tangible way, to come up with a nonprotectionist approach that I think can reduce the trade deficit, particularly with the Japanese.

And I want to thank you, Mr. Chairman, and Mr. Frenzel, because both of you have been extremely giving in your time as we have discussed this legislation and put it together, and both of you gentlemen, and your staffs, have been extremely gracious.

And I want to thank both of you because this is not the first time that you have helped me on an important trade issue, and I thank you for it.

Chairman GIBBONS. I wanted to ask you how "Port Wyden" is getting along out there.

Mr. WYDEN. You are very kind, Mr. Chairman; very, very kind. Mr. Chairman, the legislation that I would like to discuss is the legislation that we have talked about before, which is designed to ensure that the United States has the same access to basic research and technology that is developed in other countries, as our overseas competitors have to technology that is developed in this country.

To try to achieve reciprocity in this critical area of international competition, I have introduced the Fair Access To Technology Act, H.R. 4360, which would amend title I of the Trade Act of 1974, to designate that reciprocal access to technology would be one of this country's foremost priority negotiating objectives in all upcoming bilateral and multilateral trade talks.

Mr. Chairman, and members of the committee, I can summarize the problem in, really, just a couple of sentences.

We essentially have a "one-way street" with respect to technology and the Japanese. They get access to our technology but we do not get access to theirs.

And I just think that we ought to do something to stop giving away the company store in technology, and getting nothing in return. The tragedy of all this, Mr. Chairman, is that what we have is really a boomerang effect.

For instance, in Japan, three-fourths of their technology comes from the United States, and then it boomerangs back to us in this country in the form of low-priced imports. This unequal flow of technical knowledge is a significant contributing factor to our horrendous trade deficit, and it is something, Mr. Chairman, that I think we can do something about without going to protectionist approaches that could create a variety of other problems rippling through our system.

The ability of the Japanese to copy United State's technology and incorporate that technology into commercial applications has led to a modern Japanese economy that is in a position to dominate the world in a number of key areas.

Now, however, they have developed a significant capacity to develop their own basic research and technology. Japanese research expenditures grew 400 percent in the past two decades, and more than doubled between 1979 and 1984, alone.

Now most of this new technology, new Japanese technology is off limits to the citizens of this country. We are prohibited, for example, from licensing government-held patents. We have been denied participation in joint research and development ventures.

We have been refused access to government-funded laboratories. In a nutshell, the reciprocal flow of technology is just simply out of whack.

We know that this can have great implications—a hidden brain drain where you would have a net outflow of our best technological achievements—but unfortunately, in the policymaking sense, we just have not understood that this sea change has taken place, and that we no longer necessarily enjoy technological superiority in the industries that are going to shape the future.

What I think is particularly ominous is that we may, one day, be forced to rely on imported technology to literally maintain our country's defenses.

So, I think what we need, and ought to receive, is fair access to government-owned or government-supported basic research and technology in Japan and other countries. Our focus, both in the Congress, and at the negotiating table, ought to be directed towards removing the specific institutional barriers that are blocking access to Japanese technology, and towards ensuring full participation by United States firms in government-supported research programs and research labs in Japan.

What we ought to do is insist that Japan, and other countries, dismantle the structural barriers that are blocking reciprocal access to technology. If we do not redress this glaring imbalance, I think we are going to be in a position, a competitive position, where our position in the world economy will continue to suffer in the years ahead.

Now one last point, if I might, Mr. Chairman.

According to a recent study, the Japanese have a nearly 5 to 1 overall advantage in technology exchange with this country, and imbalances of up to 10 to 1 exist on technology exchanges applicable to specific industries like machine tools. The present plight of the United States machine tool industry is a stark example of what can happen when a competing country becomes dominant in the development of new technology that can be applied to a specific industry.

Now, we have had some talks with the Japanese on this idea in the past, Mr. Chairman, but nothing has come of them. That is why I think that we ought to take this formal and direct step in amending our Trade Act to designate access to technology as a formal United States negotiating objective. I think it is a reasonable and constructive approach that Members of Congress on both sides of the aisle, those that have taken a more protectionist approach and those, like myself, that have tried to resist protectionism, can join in together.

It is a positive kind of an approach and it is one that would make very clear that we are not going to sit by and continue to allow this one-way street for technology to continue. I think with adequate exchange of technology, we, and other countries, around the world, can prosper together.

Mr. Chairman, again, my thanks to you, not just for today, Mr. Chairman, but for all the help you have given me on trade issues in the past and for the extensive discussions we have had, both with you and your staff, on this particular piece of legislation, as well.

They have been most helpful and I know that their time is short and they have given plenty to this Member of Congress.

[The prepared statement follows:]

STATEMENT OF HON. RON WYDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

FAIR ACCESS TO TECHNOLOGY

Mr. Chairman, I very much appreciate the opportunity to appear before the Subcommittee today to discuss a bill I recently introduced that is designed to ensure that the United States has the same access to basic research and technology developed in other countries as our overseas competitiors have to technology developed in this country. To help us achieve reciprocity in this increasingly important aspect of

international competition, the Fair Access To Technology Act (HR 4360) would amend Title I of the Trade Act of 1974 to designate reciprocal access to technology as one of this country's formal priority negotiating objectives in all appropriate upcoming bilateral or multilateral trade talks.

For far too many years America has been giving away the company store in technology—and receiving little or nothing in return. For instance, in Japan, three fourths of their technology has come from the U.S.—and then "boomerangs" back to us in the form of low priced imports. This unequal flow of technical knowledge, a significant contributing factor to our horrendous trade deficit, must stop.

The ability of the Japanese to copy U.S. technology and incorporate that technology into commercial applications has led to a modern Japanese economy that is on the verge of dominating the globe. Now, however, the Japanese are no longer just highly successful imitators and copiers. They have developed a significant capacity to develop their own basic research and technology. Japanese research expenditures grew 400 per cent in the past two decades and more than doubled between 1979 and 1984 alone.

Most new Japanese technology is off limits to Americans. We are prohibited from licensing government-held patents. We are denied participation in joint research and development ventures. We are refused access to government funded laboratories. In a nutshell, the reciprocal flow of technology between the U.S. and other industrial countries is seriously out of whack.

American is suffering from a hidden "brain drain," a net outflow of our best technological achievements. But our policy-makers, like 19th century generals, are still fighting the last trade war. They fail to understand that a sea change has taken place and that we no longer necessarily enjoy technological superiority in the industries that will shape the future. Even more ominously, we may one day be forced to rely on imported technology to maintain our nation's defense.

What we need and ought to receive is fair access to government-owned or government-supported basic research and technology in Japan and other countries. Our focus in the Congress and at the negotiating table should be directed toward removing institutional barriers that block access to Japanese technology, and toward ensuring full participation by U.S. firms in government-supported research programs and research laboratories in Japan.

The U.S. should insist that Japan and other nations dismantle the structural barriers that block reciprocal access to technology. If we do not redress this glaring technology imbalance, our competitive position in the world economy will continue to weaken—and our efforts to address the resulting trade imbalance through passing new trade laws will be for naught. All the market access in the world will not help the U.S. sell a single obsolete or technically inferior product.

According to a recent study, the Japanese have a nearly 5 to 1 overall advantage in technology exchange with this country, and imbalances of up to 10 to 1 exist on technology exchanges applicable to specific industries like machine tools. The present plight of the U.S. machine tool industry is a stark example of what can happen when a competing country becomes dominant in the development of new technology that can be applied to a specific industry.

Reciprocal access to technology should be a top negotiating priority in all future multilateral trade talks and bilateral negotiations with the Japanese. We've had informal negotiations with the Japanese on this subject in the past—the 1983 U.S.-Japan High Technology Working Group, for example—but nothing has come of them. That's why I think it's imperative that a more formal and a more direct process be put into place in this area.

Designating access to technology as a formal U.S. negotiating objective is a responsible and constructive approach because it will allow negotiators on both sides to determine the most effective and most flexible means of achieving this goal in good faith. The alternative to negotiating reciprocal access to new knowledge could be a hard-line approach that would cut off foreign access to our technology. Some have suggested exactly that. Reluctance to provide equitable access to technology would be considered an unfair trade practice—and we would retaliate by cutting off foreign researchers who seek to acquire U.S. know-how.

Congress should, in my view, take a more positive approach. Since technology ultimately knows no national boundaries, we should negotiate for the removal of government-sanctioned restrictions—wherever they exist. Rather than slamming the door to our own research labs, we should strive to increase the world's storehouse of knowledge by working cooperatively to develop and share new, cutting-edge technologies—those that will determine the kind of world our children and grand-children will inherit. If we proceed with wisdom in this area, we can help ensure a healthy international marketplace in which all nations can prosper.

Chairman GIBBONS. Thank you.

Mr. FRENZEL. Mr. Chairman, would you yield to me?

Chairman GIBBONS. Sure, go ahead.

Mr. FRENZEL. I have got to go to a markup and I guess I am a cosponsor of this splendid idea. The reason that I did it is, basically, because it is a good idea but it is also true that one of our most valued advisers on this subcommittee has been the gentleman from Oregon. He has worked with us and where some other Members have been less willing to work with us, he has suffered all of our bureaucracy, and our slowness of action. I want to commend him for that and also commend him for his bill and tell him that I hope and expect that it will be made a part of our bill.

I thank the chairman for that.

Mr. WYDEN. I want to thank the gentleman from Minnesota again. You have just been so kind and I am very appreciative.

Chairman GIBBONS. Let me say, before the gentleman from Minnesota gets way out of the room, that when we start the markup, the discussion draft that we have, all of the things that are in there, will not be in there, unless we adopt them.

So, we will start from that very fair vantage point.

Mr. FRENZEL. Thank you.

Chairman GIBBONS. OK, Mr. Schulze?

Mr. SCHULZE. Thanks to our colleague I have no questions.

Chairman GIBBONS. John Duncan, do you have any questions?

Mr. DUNCAN. We thank you for your input, and I have no questions.

Mr. WYDEN. Gentlemen, it is a pleasure to work with you as always.

Chairman GIBBONS. You bring us your ideas and we will try to adapt them the way that we see them.

Thank you very much, Ron.

Mr. WYDEN. Thanks very much, Mr. Chairman.

Chairman GIBBONS. Our next witness is Hon. Charles Rose of North Carolina.

STATEMENT OF HON. CHARLES ROSE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA, AND CHAIRMAN, SUBCOMMITTEE ON TOBACCO AND PEANUTS, COMMITTEE ON AGRICULTURE

Chairman GIBBONS. Mr. Rose, we always look forward to hearing from you.

Mr. ROSE. You are very kind, sir, to invite us to come here today and I would like to ask that my statement be made a part of the record.

Chairman GIBBONS. Yes, sir; it will.

Mr. ROSE. Mr. Chairman, I would just like to make a few brief comments. It has been my pleasure to observe these trade issues from two vantage points. One, as the subcommittee chairman on tobacco and peanuts of the House Agriculture and the second is chairman of the Economic Committee of the North Atlantic Assembly, which is a parliamentary group of Congressmen from NATO countries each year that in February we get briefed by OECD on world trade and world economic matters. Mr. Chairman, this year

it was very obvious in talking with our delegation to OECD that they were getting very excited and geared up about the coming trade negotiations and that they were planning to have as much impact on agriculture as they could. In other words, the point that I would like to commend you for today and urge you to stress very strongly in your legislation to our trade negotiators, is that they are not to be in the business of second guessing Congress or of rewriting agricultural laws but negotiating the trade effects of those laws.

What I hear from Mr. Streeter, who is a good friend of ours, but following the line that is coming out of our administration, is that they are getting all excited about this rewriting agriculture policy from one end to the other in some kind of a global markup. I hope and believe that you will caution them that their responsibility is not to go that route, but to negotiate the trade implications of the trade effects of the laws that we already have in place.

I question very seriously the commitment of the Department of Agriculture to our current agricultural programs. It is of the mindset that our agricultural programs need more free market elements and to help substantiate this point, you only have to look at the series of publications that the Economic Research Service of USDA recently published, all of which purported to be background information for the 1985 farm bill, and USDA put together a slide show based on and interconnected with these booklets which extol the virtues of free market agriculture. This slide show was intended for nationwide distribution through such groups as the U.S. Chamber of Commerce. Now, I question USDA's commitment to current farm programs on the basis of incidents like that and others, and I commend you again, for raising some points of guidance to our negotiators for them to follow.

The subcommittee, you might be interested in knowing that twice before, when U.S. tobacco producers sought a remedy under section 22, they were roundly turned down and received less than a warm reception from the USDA as well as the ITC.

The first section 22 hearing was an embarrassment not only for the producers but for Members of Congress as well. USDA was poorly equipped to answer the questions asked by the ITC. Someone said that they were like the groom at a shotgun wedding—they were there in body but not in spirit.

The second ITC hearing was not much better than the first and at the second hearing, the ITC demonstrated that it now feels it should pass on the relative merits of price support programs that we, in Congress, have enacted. They denied producers relief on the basis that their real problems were competitive in nature.

So, I appreciate very much what this subcommittee is doing and I hope that you call on those of us in the Agricultural Committees to do whatever we can to aid you in passing what you are about here, today. I certainly commend you for what you are doing and I am solidly behind you and want to help in any way you can let me help you.

Chairman GIBBONS. Thank you, Mr. Rose, we appreciate it.

[The prepared statement follows:]

STATEMENT OF HON. CHARLES ROSE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. Chairman, members of the subcommittee, I appreciate the opportunity to appear before you today to discuss the necessity of establishing clear and concise guidelines and objectives for our trade negotiators, particularly with respect to any discussions of agricultural issues during the next round of multilateral trade negotiations. There are certain items which I believe should be stressed during any agricultural discussions, and I hope that you will find my suggestions useful as you continue your review of your trade legislation package.

First, I believe it would be helpful for Congress to reiterate to our negotiators who will be discussing agriculture that our domestic agricultural programs are not to be the subject of the negotiations; rather, the focus should be on the trade effects of our current programs. In other words, the negotiators should not attempt to second guess the wisdom of Congress in enacting certain agricultural programs and thereby treat those programs as negotiable items. Our negotiators must accept the fact that we in the Congress have chosen, and quite responsibly I might add, to limit agricultural production, stabilize farm income, and provide consumers with a steady and reliable source of foodstuffs and other agricultural commodities. Without some clear input from Congress on this point, I believe that the discussions may be approached in a manner which indicates that our farm programs are the culprit or the cause of our current agricultural trade problems.

To illustrate what I mean by these statements, I think it would be useful to discuss my perception of this administration's record in the area of agriculture and agricultural trade policy, as well as explain how I believe our producers' interests may be compromised during negotiations if this issue is not addressed.

As a member and subcommittee chairman of the House Agriculture Committee, I have repeatedly been told by the executive branch and the U.S. Department of Agriculture, of the virtues of so-called free market agriculture. I have been told that if we would cut our agricultural commodity prices to some ridiculously low "competitive" level, and approach farm programs with the idea of eliminating or loosening our agricultural programs, then our trade problems in agriculture would vanish as the world accepted us with open arms, and joined with us in embracing this free market philosophy. Aside from the obvious factual problems with such statements, I believe that the matter of feeding this Nation's people is, at the bottom line, a matter of national security. So far as I know, one thing no one has figured out yet, is how to survive without food.

The U.S. Department of Agriculture, an agency which will provide crucial assistance to our negotiators during any multilateral trade negotiation discussions on agricultural issues, is of the mind set that our agricultural programs need more free market elements, and to help substantiate this point, one need only look at a series of publications published by the Economic Research Service of USDA, all of which purported to be background information on the 1985 farm bill. I might add that USDA also put together a slide show based or interconnected with these booklets which extolled the virtues of free market agriculture. This slide show, developed in 1984, was intended for distribution nationwide to such groups as the chamber of commerce. One must question the commitment USDA has to current farm programs on the basis of incidents such as these, and other experiences I and my staff have had when discussing agricultural trade matters with the Department of Agriculture.

For example, I believe that my subcommittee has been at the forefront of uncovering and calling to the attention of the U.S. Department of agriculture a number of unfair trade practices and nontariff barriers which exist with respect to tobacco trade. At my subcommittee's request, USDA reluctantly provided information requested from agricultural attaches in tobacco producing nations, the majority of whom are gatt signatories. The request made by the subcommittee was very specific, and described what I considered to be a number of hindrances to trade, yet in many cases our agricultural attaches seemed unable to fully respond to the request.

Additionally, on a number of occasions, in discussions with USDA on proposed legislation the subcommittee has been considering, USDA has been more interested in saying "Oh, don't do that: You'll invite retaliation," instead of providing encouragement in approaching the matter from a GATT legal standpoint. I have always approached trade matters from a GATT legal standpoint, even though agriculture enjoys some general exemptions from the application of GATT.

Finally, I think the subcommittee might be interested in knowing that twice before, when U.S. tobacco producers sought a remedy under section 22, they were

roundly turned down, and received a less than warm reception from USDA, as well as the International Trade Commission.

The first section 22 hearing was an embarrassment to not only the producers, but members of Congress as well. USDA was poorly equipped to answer the questions they were asked by the International Trade Commission, and presented testimony that reminded me of a groom at a shot-gun wedding. "His body may be there, but his heart sure ain't in it."

The second ITC hearing was not that much better than the first, and the International Trade Commission, now in the business of passing on the relative merits of various price support programs that we in Congress have enacted, denied producers relief on the basis that their real problems were "competitive" in nature.

I believe that all of these examples point out that there are some real serious commitment problems with respect to this administration's approach on agricultural trade matters, and again stress the necessity of making sure our negotiators are committed to the needs of our producers, the security of this Nation, and accept fully Congress' wisdom in the area of farm programs. If necessary, our negotiators should be reminded that the objectives of our farm programs do not need to be replaced, and that there is plenty of room for them to discuss and negotiate widespread nontariff barriers or unfair trade practices practiced elsewhere.

In addition to this issue, I noted with great interest that one of the objectives your subcommittee has proposed involves the reduction or the need to eliminate the reliance of developing countries on special and differential treatment, as well as the requirement that these developing countries assume equivalent obligations with respect to their import and export practices.

This is an objective which is crucial to the well being of American agriculture, particularly because many of these developing countries are heavily involved or becoming heavily involved in agricultural production as a means of stabilizing their economies, or fostering economic growth. In addition to the fact that developing countries enjoy lower standards of living and require less economic input to produce agricultural products than here in the United States, many of these developing countries have pursued practices that are either blatant trade barriers, or clever subterfuges to undercut U.S. producers on the world market.

I sense an underlying commitment on the part of the executive branch to somehow ignore or forgive many of these practices. Additionally, I know that there is a need for concern about the economic well being of these countries and that our producers interests are often compromised away to maintain good relations with these countries.

However, this kind of approach has played havoc with the incomes of our agricultural producers, upset the strong positive balance of trade payments position agriculture once enjoyed, undercut the income of all agricultural producers worldwide, and done nothing to help address the current world oversupply situation experienced by many agricultural commodities.

I know that a major focus of the Tokyo rounds was on the EC countries agricultural system. While I agree that the practices the EC engages in are a matter of major concern to us, I believe, however, that it is important that we remember that we here in the United States and the EC do not have a monopoly on agricultural production, and must deal with all of our neighbors if we are going to address the needs of agriculture. Therefore, I applaud your efforts to recognize the importance of developing countries in your bill, and hope that this objective is addressed at the next multilateral trade negotiations.

One suggestion I would also make with respect to your bill pertains to the area of strengthening GATT rules as they relate to subsidies and countervailing duty measures. It may be that you have already considered the idea I will put forth, but if you have not, I hope that you will.

I think it is important that some consideration be given to the nature or the role that private enterprise plays in the area of subsidies. I noted that you specifically mentioned other forms of Government intervention which may fall into the general catchall of subsidies as items which should be considered for discussion. However, particularly in developing countries, it has been my experience that private enterprise is heavily involved in subsidizing production, sometimes with Government intervention, sometimes merely with Government acquiescense. Private enterprise may also have various sorts of agreements with the host Government that, in my mind, carry the same force and effect as an outright subsidy.

While this is a very complicated and difficult area to discuss, I believe it has been a particular problem with respect to agricultural production which you might want to consider addressing.

Finally, I am concerned about the manner in which tariff negotiations are conducted, and what the outcome is with respect to agricultural commodities. Another major focus of the Tokyo rounds was tariff negotiations. It appears to me that non-tariff barrier discussions were not nearly as prominent as they should have been, particularly with respect to agriculture.

I think that the issue can be fairly raised that agricultural producers, at least with respect to tobacco, were treated less fairly than the manufacturers of the finished product. Today there continues to be a strong and effective tariff on imported cigarettes: However the tariffs on the raw commodity, tobacco, are on a declining schedule. Additionally, the effect of the tariff with respect to tobacco imports must be questioned due to the fact that drawback eliminates virtually all protection the tariff is designed to provide.

It seems to me that some consideration, particularly in the area of agriculture, must be given to the actual meaning or value of the tariffs in force, in light of the effects of drawback. Also, I believe it is important that tariff negotiations be approached with a careful eye as to the advantages given to the producer of a commodity and the manufacturer of the finished product.

In closing, I would again like to thank you for the opportunity to discuss some of my concerns regarding objectives for our trade negotiators who will be discussing agricultural issues. I hope that my comments have been of assistance to you, and I want to assure you that I am willing to assist you in the future in any manner that you feel I can be of service to you on agricultural issues.

Chairman GIBBONS. We have always tried to work with the Agriculture Committee knowing the uniqueness of the area in which you work and I think the administration would be ill-advised or any negotiator of ours, would be ill-advised to think that they can rewrite wholesale a lot of domestic laws, because in that area, it is subject to review by Congress. Of course, if Congress turns it down, it goes down.

The negotiation has been for naught. So I would trust that while they may have philosophical views about which way agriculture ought to be headed, they would have also a realistic approach that Rome was not built in a day nor policies changed overnight, that have evolved over a long period of time.

I come from an area of the world in which most agriculture is of the free-market variety, very little Government control or support and my personal philosophy, of course, is to like that. But I do realize that not every crop is grown the same way and that large parts of America are built around certain practices. These have to be respected.

So, we will be working with you on that.

Mr. ROSE. Thank you, Mr. Chairman. I would only add that those crops that tend to be under Government programs in this country, also tend to be under Government programs in other countries.

Chairman GIBBONS. Yes; I understand.

Mr. ROSE. They tend to work hand-in-hand that way.

Thank you, Mr. Chairman.

Chairman GIBBONS. One of the most challenging things that man faces is to learn how to balance the need for food and fiber with the adequate prices and incentives and things of that sort to keep it produced. I often am critical of the agricultural program of the United States and then I realize that obesity is a problem in the United States, not starvation. Between the two, I would rather suffer from obesity. I would rather not suffer from either one but it is great to know that there is going to be something on the grocery shelf when you go in there.

Mr. Schulze?

Mr. SCHULZE. Again, Mr. Chairman, I would like to thank our colleague for his very sage presentation. We appreciate the input and assure him that every consideration will be given to his point of view.

Thank you, for your testimony.

Mr. ROSE. Thank you very much.

Chairman GIBBONS. John?

Mr. DUNCAN. Thank you. I want to thank Charlie also, he has been a great help in particular to our area of the country and he is the most versatile man that I know on trade matters, in particular, as far as agriculture is concerned.

I want to thank you for your input.

Mr. ROSE. Thank you.

Mr. DUNCAN. You are always helpful to us.

Mr. ROSE. Thank you, sir.

Chairman GIBBONS. For those in the audience today, let me call attention to a press release No. 18 that came out from the Committee on Ways and Means in which we are trying to save money. All future witnesses ought to know that in the future, their statements will be required to be put together in such a way that they are camera ready so that we can save a lot of money in the printing process. All people ought to know that we are going to quit giving away documents. We are going to ask you to pay for them.

The staff tells me that this is because of Gramm-Rudman-Hollings. I do not know whether you all have picked up that press release No. 18, but I think that it would be a good idea to go by and get acquainted with it. We are not going to impose that rule retroactively on anybody in these hearings, and of course that would be an exception to the rule, but I urge you to become thoroughly acquainted with it. Those of you who are publishing certain journals ought to pick it up, too, so that all witnesses in the future will understand that problem and perhaps save retyping and everything else of documents.

Our next witnesses are Mr. Carlos Moore, and Mr. Stanley Nehmer, American Fiber, Textile, Apparel Coalition [AFTAC]; American Iron & Steel Institute; Bicycle Manufacturers Association; Lead-Zinc Producers Committee; Leather Products Coalition; including United Food & Commercial Workers Union, AFL–CIO; Rubber Manufacturers Association, Footwear Division; and Copper & Brass Fabricators Council.

STATEMENTS OF STANLEY NEHMER, PRESIDENT, ECONOMIC CONSULTING SERVICES, AND CARLOS MOORE, CHAIRMAN, AMERICAN FIBER, TEXTILE, APPAREL COALITION, ACCOMPANIED BY FRANK FENTON, VICE PRESIDENT, AMERICAN IRON & STEEL INSTITUTE; MITCHELL COOPER, RUBBER MANUFACTURERS ASSOCIATION, FOOTWEAR DIVISION; AND MICHAEL KERSHOW, BICYCLE MANUFACTURERS ASSOCIATION OF AMERICA, INC; ALSO ON BEHALF OF SPECIALTY STEEL INDUSTRY OF THE UNITED STATES; LEAD-ZINC PRODUCERS COMMITTEE; LEATHER PRODUCTS COALITION; UNITED FOOD & COMMERCIAL WORKERS UNION, AFL-CIO; AND COPPER & BRASS FABRICATORS COUNCIL

Mr. NEHMER. Good morning, Mr. Chairman.

Chairman GIBBONS. Good morning, Mr. Nehmer.

Welcome back.

Mr. NEHMER. Good to see you again, sir.

Chairman GIBBONS. Good to see you.

Mr. NEHMER. Our photo-ready copy of our testimony has been submitted in advance.

Chairman GIBBONS. Well, I knew that you would do it in style.

Mr. NEHMER. Thank you, Mr. Chairman.

We are here today on behalf of the organizations whose names you have mentioned. In addition the Speciality Steel Industry of the United States is one of the eight organizations before you this morning.

I would like to introduce the people who are here. Only two of us have statements to make but all of us will be available to answer questions. On my right is Carlos Moore, chairman of the American Fiber, Textile, Apparel Coalition and executive vice president of the American Textile Manufacturers Institute. To his right is Frank Fenton, vice president for international trade and economics at the American Iron & Steel Institute, and to my immediate left is Mitchell Cooper, representing the Rubber Manufacturers Association, Footwear Division. To his left, is Michael Kershow, representing the Bicycle Manufacturers Association of America.

Mr. Chairman, 7 years ago, this month, Ambassador Robert Strauss, then U.S. Trade Representative, came before this subcommittee and made a statement. I would like to quote from it because it is quite relevant to what is before you today.

He said:

> The Tokyo Round package that we will submit to the Congress shortly contains many concrete benefits to the United States. For enterprising American business, it means new opportunities for profitable sales abroad. For our more import sensitive industries, for which we do not at this time, anticipate new foreign markets, the Tokyo Round along with other Administration programs offers an opportunity to adjust to a changing world economic reality with a minimum of discomfort. The agreements offer hope and encouragement for more active and rewarding U.S. participation in future world trade. They can help us to restore the dynamism and the positive spirit for which American industry is justly proud and famous. For our workers the Tokyo Round means new job opportunities in higher paying industries. A good job in a company with a future is the best kind of job security that I can think of.
>
> To our farmers, the Tokyo Round means a continuing and growing role in world markets, a dramatic expansion of export opportunities.

Two months later, before the Senate Finance Committee, Ambassador Strauss said, "In our judgment, the package that you have before you, benefits every single section, every sector and every economic strata of this country."

Mr. Chairman, members of this committee, we are here to say to you, today, that we oppose the granting of new tariff cutting authority to the President in a new round of trade negotiations.

An authority, we might point out, which the administration has not requested of Congress. Yet, section 173 of the subcommittee's discussion draft bill would provide such authority.

We oppose tariff cutting authority as part of a new trade round for two fundamental reasons. First, American manufacturing industries—notwithstanding the promises and the statement made by Ambassador Strauss, in 1979—American manufacturing industries, including all of the industries represented by us are considerably worse off today than they were prior to the Tokyo round.

In our prepared statement that you have before you, you have industry-specific data on the state of health of each of these industries. In aggregate terms, the loss of some 900,000 jobs in manufacturing since 1980, and the increasing trade deficit, which grew four-fold in this period, to almost $150 billion in 1985, clearly attests to the seriously deteriorating position of U.S. manufacturing industries in the U.S. economy.

Our second reason is that many of these industries have already paid the price for a trading regime that has been steadily liberalized over several successive trade rounds. Our markets, among the largest and most open in the world, receive a disproportionate share of world imports, particularly from the developing countries. These are the same developing countries that will be the focus of a new trade round which has, as a major goal, the opening up of developing country markets to U.S. services, and U.S. investment.

Our industries understand all too well what that means. The developing countries will be exacting a price for opening up their markets and that price will be improved access to our markets for their exports of textiles, apparel, footwear, steel, copper and brass fabricated products, bicycles, lead, zinc, luggage, handbags, workgloves, et cetera. This improved access translates into U.S. tariff reductions on items that these countries already export to us in huge quantities, often on a subsidized or dumped basis.

Must we concede still more of our markets to these countries in order that U.S. market opening objectives for U.S. services and investment opportunities are met?

The industries represented here today, and we suspect many others as well, do not want to be used as pawns for U.S. negotiating objectives in other areas. Our tariffs should not be the price paid to open up developing markets to the products or services of other U.S. industries. It is bad enough that our industries have been repeatedly traded off for U.S. foreign policy objectives in these countries—a situation that is becoming more and more blatant every day.

In summary, Mr. Chairman and members of the committee, the industries represented here today would clearly be hurt by further duty cuts which would make the U.S. market with relatively few nontariff barriers an even more attractive market.

More important, however, these tariffs, no matter how small, provide some degree of insulation against imports. To reduce these tariffs would be catastrophic to certain domestic producers and workers. Duties make a substantial difference to these industries

We think that the proposal to give the President this authority is coming at the worst possible time, insofar as U.S. manufacturing is concerned. If it is granted, more plants will close or go off-shore to compete. The bottom line will be less U.S. manufacturing jobs and less productive capacity in this country.

We urge this subcommittee not to report a bill that would grant the President such authority.

And now, Mr. Carlos Moore.

Mr. MOORE. Mr. Chairman, I would ask your permission that my statement be submitted for the record. Thank you.

Chairman GIBBONS. Certainly.

Mr. MOORE. Thank you.

Mr. Chairman, my name is Carlos Moore and I am the chairman of the American Fiber, Textile, Apparel Coalition. This coalition comprises some 21 organizations which represent industries and labor unions involved in the production of textile fibers, fabrics, apparel, and other textile products throughout the United States. I appreciate the opportunity to appear here on their behalf.

As you heard from Mr. Nehmer, we have joined with other organizations and coalitions to register our opposition to any grant of tariff cutting authority as part of the upcoming round of GATT multilateral trade negotiations. I would like to provide some additional details as to why we oppose this grant of tariff cutting authority

When the Tokyo round of multilateral trade negotiations was over in 1979, the textile and apparel industry had 2.2 million workers. Today the industry has 1.8 million. In 1979, textile and apparel imports amounted to $8.7 billion and in 1985, those imports were $21.3 billion, or an increase of over 145 percent.

The textile apparel trade deficit in 1979, was $4.6 billion. Last year, it was $18 billion, or a 300-percent increase. Import pentration during this period has doubled and today, imports account for over half of our apparel and apparel-related products market. Also, during those 6 years, the tariff reductions negotiated during the Tokyo round went into effect.

In successive stages, tariffs on textiles and apparel have been reduced by some 25 percent. Further duty cuts will go into effect over the next few years. It is important to note that the reductions negotiated on U.S. textiles and apparel during the Tokyo round were not as large as cuts made on many other U.S. tariff lines. There is a very good reason for this.

Prior to and during the Tokyo round, the U.S. International Trade Commission determined that the U.S. textile and apparel industry and its workers were seriously impacted by imports. For some textile and apparel lines the ITC concluded that no duty reductions should be made. In many other cases, the ITC advised that cuts could be made provided that those cuts were less than called for by the tariff cutting formula that was used by our negotiators.

Thus, there were sound economic reasons not to expose an import-impacted industry to significantly lower tariffs. Now, the

administration is seeking authority to cut duties further by 60 percent, or in some cases, to eliminate them.

As I indicated earlier, economic conditions in the U.S. textile and apparel industry have worsened significantly from what they were in 1979. In response to the damage suffered by this industry, the Congress, last year, passed the Textile and Apparel Trade Enforcement Act of 1985, which would have provided real relief.

Many of you on the Ways and Means Committee voted for that bill and we, in our coalition are grateful. As you know, the President vetoed that bill. So this industry and its workers are still facing a serious import problem and imports this year, are surging at a rate of over 25 percent.

Any tariff reductions on top of those already made and already scheduled to occur, will only add to the damage suffered by this industry and will lead to more losses of jobs. Yet, it is obvious that foreign governments and the administration are eyeing these tariffs as bargaining chips in a new GATT round. We do not want to be the industry to pay for the administration's other objectives in this round. We paid in the last round and we have continued to pay while waiting for commitments to be kept to relate import growth to the growth of our domestic market. For these reasons, we oppose any grant of tariff cutting authority by the Congress to the administration.

Thank you.

[The prepared statements follow:]

STATEMENT OF THE

American Fiber, Textile, Apparel Coalition (AFTAC)
American Iron and Steel Institute
Bicycle Manufacturers Association of America, Inc.
Copper and Brass Fabricators Council
Lead-Zinc Producers Committee
Leather Products Coalition*
Rubber Manufacturers Assn. -- Footwear Division
Specialty Steel Industry of the United States

SUMMARY STATEMENT

The industries represented here today oppose granting the President authority to cut tariffs as part of a new round of trade negotiations. It should be noted that the Administration has not requested this authority of Congress.

We take this position because American manufacturing industries are considerably worse off today than they were prior to the Tokyo Round, the last round of trade negotiations, which concluded in 1979. In aggregate terms, the loss of some 900,000 jobs in manufacturing since 1980 and the increasing trade deficit, which grew four-fold in this period to almost $150 billion in 1985, attest to the seriously deteriorating position of U.S. manufacturing industries in the U.S. economy.

Moreover, many of these industries have already paid the price for a trading regime that has been steadily liberalized over several successive trade rounds. Our markets, among the largest and most open in the world, receive a disproportionate share of world imports, particularly from the developing countries. These are the same developing countries that will be the focus of a new trade round, which has as a major goal the opening up of developing country markets to U.S. services and U.S. investment. The developing countries will be exacting a price for opening up their markets and that price will be improved access to our markets for their exports of textiles, apparel, footwear, steel, copper and brass fabricated products, bicycles, lead, zinc, luggage, handbags, work gloves, etc. This improved access translates into U.S. tariff reductions on items that these countries already export to us in huge quantities, often on a subsidized or dumped basis.

The industries represented here today do not want to be used as pawns for U.S. negotiating objectives in other areas. Our trade negotiators should not trade away our tariffs, but instead tie continued access to the U.S. market to these countries' demonstrated willingness to open up their markets to more U.S. goods and services.

These tariffs, no matter how small, provide some degree of insulation against imports. To reduce these tariffs would be catastrophic to certain domestic producers and workers; duties make a substantial difference to these industries.

We think the proposal to give the President this authority is coming at the worst possible time insofar as U.S. manufacturing is concerned. If it is granted, more plants will close, or go off-shore to compete. The bottom line will be less U.S. manufacturing jobs and less productive capacity in this country. We urge the Subcommittee not to report a bill that would grant the President such authority.

This statement in opposition to tariff cutting authority is made on behalf of the following organizations:

- AMERICAN FIBER, TEXTILE, APPAREL COALITION (AFTAC)
  - Amalgamated Clothing and Textile Workers Union, AFL-CIO
  - American Apparel Manufacturers Association
  - American Textile Manufacturers Institute
  - American Yarn Spinners Association
  - Carpet and Rug Institute
  - Clothing Manufacturers Association of U.S.A.
  - Industrial Fabrics Association International
  - International Ladies' Garment Workers' Union, AFL-CIO
  - Knitted Textile Association
  - Luggage and Leather Goods Manufacturers of America
  - Man-Made Fiber Producers Association
  - National Association of Hosiery Manufacturers
  - National Association of Uniform Manufacturers
  - National Cotton Council
  - National Knitwear & Sportswear Association
  - National Knitwear Manufacturers Association
  - National Wool Growers Association
  - Neckwear Association of America
  - Northern Textile Association
  - Textile Distributors Association
  - Work Glove Manufacturers Association
- AMERICAN IRON AND STEEL INSTITUTE
- BICYCLE MANUFACTURERS ASSOCIATION OF AMERICA, INC.
- COPPER AND BRASS FABRICATORS COUNCIL
- LEAD-ZINC PRODUCERS COMMITTEE
- LEATHER PRODUCTS COALITION
  - Amalgamated Clothing and Textile Workers Union, AFL-CIO
  - Footwear Industries of America, Inc.
  - International Leather Goods, Plastics and Novelty Workers' Union, AFL-CIO
  - Luggage and Leather Goods Manufacturers of America, Inc.
  - United Food & Commercial Workers Union, AFL-CIO
  - Work Glove Manufacturers Association
- RUBBER MANUFACTURERS ASSOCIATION - FOOTWEAR DIVISION
- SPECIALTY STEEL INDUSTRY OF THE UNITED STATES

The industries represented by these organizations are located throughout the United States. From footwear plants in Maine to nonferrous metal smelters in the Southwest; from steel mills in the Midwest to textile mills in the South; and from clothing factories in Oregon to leather products factories in Florida, these industries employ upwards of three million workers.

These organizations oppose granting the President authority to cut tariffs as part of a new round of trade negotiations, an authority, we might add, that the Administration has not requested of Congress. Yet the Subcommittee discussion draft bill would provide such authority.

We oppose tariff cutting authority as part of a new trade round for two fundamental reasons. First, American manufacturing industries, including all of the industries represented by these orgahizations, are considerably worse off today than they were prior to the Tokyo Round, the last round of trade negotiations, which concluded in 1979. We will address this issue on an industry-specific basis later in our statement. In aggregate terms, the loss of some 900,000 jobs in manufacturing since 1980 and the increasing trade deficit, which grew four-fold in this period to almost $150 billion in 1985, clearly attest to the seriously deteriorating position of U.S. manufacturing industries in the U.S. economy.

Second, many of these industries have already paid the price for a trading regime that has been steadily liberalized over several successive trade rounds. Our markets, among the largest and most open in the world, receive a disproportionate share of world imports, particularly from the developing countries. These are the same developing countries that will be the focus of a new trade round, which has as a major goal the opening up of developing country markets to U.S. services and U.S. investment. Our industries understand all too well what that means. The developing countries will be exacting a price for opening up their markets and that price will be improved access to our markets for their exports of textiles, apparel, footwear, steel, copper and brass fabricated products, bicycles, lead, zinc, luggage, handbags, work gloves, etc. This improved access translates into U.S. tariff reductions on items that these countries already export to us in huge quantities, often on a subsidized or dumped basis. Must we concede still more of our market to these countries in order that U.S. market-opening objectives for U.S. services and investment opportunities are met?

The industries represented here today -- and we suspect many others as well -- do not want to be used as pawns for U.S. negotiating objectives in other areas. Our tariffs should not be the price paid to open up developing country markets to the products or services of other U.S.

industries. It is bad enough that our industries have been repeatedly traded off for U.S. foreign policy objectives in these countries, a situation that is becoming more and more blatant every day. The recent example of Turkey openly requesting wider access to the U.S. textile market in return for renewal of U.S.-leased military bases there only brings to light what we have long known to be the case. Continued access to the U.S. market should be sufficient reason for these countries to open their doors to our goods and services.

This access is easily measured. In 1985, $51.7 billion -- or 35 percent -- of our $149 billion trade deficit was with developing countries. In 1985 we had a $13.1 billion deficit with Taiwan, $6.2 billion with Hong Kong, $5.8 billion with Mexico, $5.0 billion with Brazil, $4.8 billion with Korea, and the list goes on. Trade in the products represented here before you today accounts for a substantial portion of these deficits. These are enormously large trade imbalances and we believe our trade negotiators should not ignore their existence. Our trade negotiators should instead tie continued access to the U.S. market to these countries' demonstrated willingness to open up their markets to more U.S. goods and services. To do otherwise is to give the developing countries a free ride while the United States and particularly our industries take it on the chin again.

Since enactment of the Reciprocal Trade Agreements Act of 1934, Congress periodically has delegated authority to

the President to negotiate and to proclaim reductions in tariffs under reciprocal trade agreements, without requiring further Congressional action. The last time Congress granted this authority was as part of the Trade Act of 1974 leading to the Tokyo Round that concluded in 1979. Each round has been preceded by pronouncements by economic theorists that point to the growth in world trade stemming directly from the liberalizing effects of successive world trade rounds and in turn how this growth benefits U.S. commerce. There certainly has been an increase in the number of goods traded in the world since the last trade round; it seems, at least to these industries, that most of the increase in trade is destined for our shores. With an overall trade deficit of almost $150 billion in 1985, there are probably very few American manufacturing industries that are better off today than they were before the last trade round -- a trade round that resulted in many U.S. products receiving the maximum allowable 60 percent tariff cut, and an average of 32 percent tariff reduction on industrial products.

Great optimism has been expressed that the U.S. trade deficit will be reduced as a result of the decline in the strength of the U.S. dollar. While some imports may become less competitive because of exchange rate realignment, this is simply not the case for many of the products of concern to the organizations represented here today. Imports of

many of these products will continue to increase despite the falling dollar. In particular, imports from the Newly Industrializing Countries (NICs), which supply the United States with such large volumes of imports, can be expected to continue to grow; since the currencies of so many NICs are tied to the U.S. dollar, there has not been a corresponding decline in the dollar against these currencies. Indeed, U.S. imports of many of the products in question continued to rise in the first two months of 1986.

Similar optimism has been expressed in forecasting job growth in the coming months and years. To the extent these expectations are realized, however, little benefit will accrue to the workers in the industries represented here today. Labor in many of these industries is not very mobile, for both economic and social reasons. It is unlikely to find an unemployed garment worker in New York City who can be relocated to Seattle to assemble jet aircraft; there is simply a gross mismatch of needed skills. It is also important to ask just what kind of jobs will be created in the near future. Most predictions are that these new jobs will not be in manufacturing; more likely they will be service industry jobs which on average are lower paid than manufacturing jobs. It is difficult to pin much hope on this prospect.

It would be useful for the Subcommittee to look at just what has happened to these industries since the Tokyo round tariff cuts began to be staged in 1980.

Textiles and Apparel

The U.S. textile industry has shut down ten percent of its capacity in the past five years, half of that in the past 18 months alone. The domestic apparel industry has been severely affected by imports, with imports supplying half of the U.S. apparel market last year. The result has been a worsening trade deficit in textiles and apparel, reaching $18.2 billion in 1985.

Lower production costs overseas put U.S. producers at a competitive disadvantage in their home market. Still, during the Tokyo Round of trade talks, the United States negotiated duty cuts averaging 21 percent for textile and apparel products. Additionally, actions taken by the United States under the Multifiber Arrangement have been ineffective in limiting import growth. Since 1980, U.S. textile and apparel imports have grown at a compound annual rate of 17 percent a year against domestic growth of no higher than 1 to 1.5 percent a year.

Despite the growing impact of imports, the U.S. Government is now initiating further actions to liberalize access to the U.S. textile and apparel market. A Free Trade Area agreement was signed with Israel last September; textile and apparel imports from Israel are now about double what they were a year ago. The Administration is also embarking on similar negotiations with Canada and possibly with the ASEAN countries as well. In addition, the

announced Caribbean Basin Initiative "Special Access Program" would guarantee greatly increased import levels for textile and apparel products from CBI beneficiary countries.

Leather-Related Products

The situation with leather-related products is similar in many respects to that in the textile/apparel sector. There are literally dozens of low-wage foreign suppliers, predominantly the developing countries. All of the leather-related products industries have lost substantial market share due to imports since the Tokyo Round. Imports now have 60 percent of the U.S. luggage market, 36 percent of the personal leather goods market, 45 percent of the work glove market, 85 percent of the handbag market, and 66 percent of the leather wearing apparel market.

Nonrubber footwear presents a special problem. Nonrubber footwear tariffs escaped cuts during the Tokyo Round because at the time the industry was under "escape clause" relief, and Section 127(b) of the Trade Act of 1974 precludes tariff cuts under such circumstances. The industry has no such protection now because the President denied the industry relief under the "escape clause" last year despite a unanimous finding of injury from imports by the International Trade Commission. However, the industry is far more vulnerable to the damaging effects of tariff cuts today, when imports have over three-quarters of the domestic nonrubber footwear market, than in 1979, when imports had

just under half of the market. This industry is not sanguine that the President would exercise restraint about cutting tariffs on its products given his response to the industry's Section 201 case last year.

Tariffs are vitally important to the firms and workers in these leather-related industries. It is a fundamental reason why virtually all the products of these industries are statutorily exempt from duty-free treatment under the GSP and CBI programs.

Rubber Footwear

The U.S. rubber footwear industry is a labor-intensive, import-impacted industry. Between 1975 and 1985, rubber footwear production in this country fell by one-half from a total of 150 million pairs to 75 million pairs. During the same period, imports -- 90 percent of which were from Korea and Taiwan -- rose from 78 million pairs to 98 million pairs. Today imports take some 58 percent of the market for rubber-soled footwear with fabric uppers and some 53 percent of the market for waterproof footwear. Because of its import-sensitive nature, duties on rubber footwear were not cut in either the Kennedy or the Toyko Round.

What is left of the domestic rubber footwear industry has a fighting chance to survive if assured that its duties will not be placed at risk in a new trade negotiation. Government officials know that the situation of the rubber footwear industry has not changed for the better since the

Toyko Round and they also know that a cut in rubber footwear duties will provide an incentive to imports to strike a mortal blow to a small but important domestic industry.

Carbon and Alloy Steel Industry

The domestic carbon and alloy steel industry has suffered through the worst period in its history during the past several years, during which period imports and import market share have grown substantially. During this period, the effects of the world recession on steel demand have been exacerbated in the United States by countercyclical exporting practices employed by other steel-producing countries, combined with dumping and subsidization, to alleviate the unemployment and low capacity utilization in their domestic steel industries.

These practices have made the United States an intensely competitive market for steel, with the combined price and volume effects of unfair competition causing massive injury to the domestic industry. The extent of the injury is evidenced by the billions of dollars in financial losses suffered by domestic steel companies, by the hundreds of plant closings, by the hundreds of thousands of lost jobs, by the International Trade Commission's 1984 finding that the industry was seriously injured under Section 201 of the Trade Act of 1974, and by the President's creation of a program of bilateral export restraints with our major steel trading competitors.

Despite these measures, however, import penetration remains well above the target limit of 18.5 percent set by the President when he announced the steel program in September 1984, and competition for market share remains extremely intense. In such a climate, where sales can be won or lost based on very small differences in price, to reduce or eliminate the tariffs on imports of steel would expose domestic producers to further massive harm from imports. This would further weaken the industry's already precarious position and directly contradict the intent of the President's trade program on steel.

Specialty Steel

To remove tariffs on specialty steel imports would also run counter to public policy aimed at remedying import-related injury to the domestic industry. Moreover, it would cause additional import-related harm to an industry that already is injured by imports.

Traditionally, the United States has been the most open and unprotected market for specialty steel in the world, with considerably lower trade barriers than any other country. The decline in world demand for specialty steel in the early 1980s brought massive injury to the domestic industry, as other countries raised protectionist barriers in their home markets, and employed a variety of unfair trading practices to quickly penetrate the more open U.S. market. A series of successful dumping and countervailing

duty cases brought by the U.S. industry illustrate the extent of the unfair trading practices faced by the industry.

In addition, the President in 1983 granted import relief to the industry after it had been found to be seriously injured by imports under Section 201 of the Trade Act of 1974. More recently, the President included specialty steel within the scope of his overall steel trade program, to rectify continued injury that was occurring despite the Section 201 relief and the antidumping and countervailing duties. These various relief measures, however, have not succeeded in halting injury due to unfair trade practices.

Clearly, the specialty steel industry has been and remains highly import sensitive. An industry in this position should not be denied the modicum of protection that is imparted by the normal rates of duty on competing imports. Even these relatively low duties can make a difference in determining whether a sale is lost to imports. To remove tariffs on specialty steel thus would increase the specialty steel industry's vulnerability to further injury. Such a result would fly in the face of the President's trade policy toward the specialty steel industry, particularly as the industry continues to suffer import-related injury despite the relief measures implemented to date.

Bicycles

The U.S. bicycle industry and its suppliers are suffering serious injury as a result of the dramatic escalation of imports, especially from Taiwan. For this reason, the industry opposes giving the President unrestricted authority to negotiate further reductions in U.S. tariffs.

A review of import trends since World War II clearly documents the import sensitivity of the U.S. bicycle industry. When the United States cut tariffs pursuant to the initial round of negotiations under the General Agreement on Tariffs and Trade in 1947, imports increased sharply. In 1948, the ratio of imports to apparent domestic consumption was 0.6 percent; by 1955, import penetration had increased to more than 40 percent. As as result of this surge in imports, the U.S. bicycle industry filed a successful "escape clause" case in 1954. The President increased tariffs on "lightweight" bicycles from 7.5 to 11.25 percent and on other models from 15 to 22.5 percent. The ratio of imports to consumption subsequently declined to 18 percent by 1967. During the Kennedy Round of trade negotiations, the United States agreed to reduce the existing duties on bicycles by 50 percent between 1968 and 1972. Over this period of tariff reductions, import penetration again steadily increased, reaching 37 percent in 1972.

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During the Tokyo Round, bicycles were among the import-sensitive articles placed on the so-called "exceptions list" exempt from negotiated reductions; accordingly, bicycle tariffs currently stand at the 5.5 and 11 percent rates implemented in 1972. Recent import trends suggest, however, that the U.S. bicycle industry cannot afford any reduction in these modest tariff levels.

In 1983, a new import surge began that shows no signs of stopping. Imports dominated 30 percent of the market in 1983, 42 percent of domestic consumption in 1984, and a record 49 percent of the market in 1985. The major force behind this import surge has been Taiwan. If current import trends continue, import penetration could reach more than 52 percent in 1986. Imports of bicycle parts have exhibited similar trends.

Lead and Zinc

The lead and zinc industries, judging from past experience, believe that tariff cutting authority may well lead to further cuts in the already low duties on its products. These products include not only primary lead and primary zinc but also related co-products and by-products such as zinc oxide, cadmium, and sulfuric acid.

During the previous MTN round, some of the industry's products were subjected to the maximum tariff cuts allowed. Subsequently, in a bilateral negotiation with Mexico, the

duty on unalloyed lead metal was cut further in return for Mexico's agreement to accede to GATT. Mexico reneged on its commitment but the United States never snapped back the tariff. The reduced duty rates since 1979 have contributed to the difficult economic situation of the industry today. The industry's products are suffering severe import pressure. Prices for the products are seriously depressed and many of the industry's facilities have been forced to close. Additional tariff cuts would only worsen its situation.

The industry fears that, in a new MTN round, in order for the United States to get anything, it will have to give up something, and that something would be tariff concessions, possibly yet again on the industry's products. The industry believes that it has already paid more than its fair share to promote world trade.

Copper and Brass Fabricated Products

Previous negotiations, including the Tokyo Round, have resulted in creating a virtual "open market" in the U.S. for foreign fabricators of brass mill products. With imports of brass mill products to the U.S. continuing to increase at an alarming rate, it is neither necessary from the standpoint of furthering world trade, nor prudent from the standpoint of a healthy U.S. economy, to pursue further reductions in U.S. tariffs on brass mill products.

The public record clearly shows that cumulative results of the series of multilateral trade negotiations following the GATT Agreement in 1948, have not produced "substantially equivalent competitive opportunities" in international trade for the United States brass mill industry.

Negotiating results in the Tokyo Round did nothing to significantly reduce the inequitable and competitively disadvantageous tariff disparities between U.S. tariff rates for brass mill products and their counterparts in the E.E.C., in Canada, and in Japan.

Conclusion

In summary, the industries represented here today would clearly be hurt by further duty cuts, which would make the U.S. market, with relatively few non-tariff barriers, an even more attractive market. More important, however, these tariffs, no matter how small, provide some degree of insulation against imports. To reduce these tariffs would be catastrophic to certain domestic producers and workers; duties make a substantial difference to these industries.

We think the proposal to give the President this authority is coming at the worst possible time insofar as U.S. manufacturing is concerned. If it is granted, more plants will close, or go off-shore to compete. The bottom line will be less U.S. manufacturing jobs and less productive capacity in this country. We urge the Subcommittee not to report a bill that would grant the President such authority.

STATEMENT OF

CARLOS MOORE

CHAIRMAN, AMERICAN FIBER, TEXTILE AND APPAREL COALITION

Mr. Chairman, my name is Carlos Moore. I am chairman of the American Fiber/Textile/Apparel Coalition (AFTAC) which is comprised of some 21 organizations representing industries and labor unions involved in production of textile fibers, fabrics, apparel, and other textile products throughout the United States. I appreciate the opportunity to appear here on their behalf.

As you heard from Mr. Nehmer, we have joined with other organizations and coalitions to register our opposition to any grant of tariff-cutting authority as part of the upcoming round of GATT Multilateral Trade Negotiations. I would like to provide additional details as to why we are opposing tariff-cutting authority.

When the Tokyo Round of Multilateral trade negotiations was over in 1979, the textile and apparel industry had 2.2 million workers. Today, the industry has 1.8 million. In 1979 textile and apparel imports amounted to $8.7 billion dollars (and 4.6 billion square yards equivalents). In 1985 imports were $21.3 billion (and almost 11 billion square yards). This is an increase of over 145 per cent (and 135 percent). The textile and apparel trade deficit in 1979 was $4.6 billion. Last year it was $18 billion, or a 300 per cent increase.

Import penetration during this period has doubled and today imports account for over half of our apparel and apparel-related products market.

Also during those 6 years, the tariff reductions negotiated during the Tokyo Round went into effect. In successive stages, tariffs on textiles and apparel have been reduced by some 25 per cent, and further duty cuts will go into effect over the next few years. It is important to

note that the reductions negotiated by the U.S. textiles and apparel during the Tokyo Round were not as large as cuts made on many other U.S. tariff lines. There is a very good reason for this. Prior to and during the Tokyo Round the U.S. International Trade Commission determined that the U.S. textile and apparel industry and its workers were seriously impacted by imports. For some textile and apparel lines, the ITC concluded that no duty reductions should be made. In many other cases, the ITC advised that cuts could be made provided the cuts were less than called for by the tariff-cutting formula used in the negotiations. Thus, there were sound economic reasons not to expose an import-impacted industry to significantly lower tariffs.

Now, the Administration is seeking authority to cut duties further--by 60 per cent, or in some cases, to eliminate them. As I indicated earlier, economic conditions in the U.S. textile and apparel industry have worsened significantly since 1979. In response to the damage suffered by the industry, the Congress last year passed the Textile and Apparel Trade Enforcement Act of 1985 which would have provided real relief. Many of you on the Ways and Means Committee voted for that bill and we in our coalition are grateful. As you know, the President vetoed that bill so the industry is still facing an import surge in which imports this year have grown by over 25 per cent.

Any tariff reductions on top of those already made and already scheduled to occur will only add to the damage sustained by our industry and lead to more job losses. Yet, it is obvious that foreign governments and the Administration are eyeing these tariffs as bargaining chips in a new GATT Round. We do not want to be the industry to "pay" for the Administration's objectives in this round. We paid in the last round and

we have continued to pay while waiting for commitments to be kept to relate import growth to the growth of our domestic market. For these reasons, we oppose any grant of tariff-cutting authority by the Congress to the Administration. Thank you.

This statement in opposition to tariff cutting authority is made on behalf of the following organizations:

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  - Clothing Manufacturers Association of U.S.A.
  - Industrial Fabrics Association International
  - International Ladies' Garment Workers' Union, AFL-CIO
  - Knitted Textile Association
  - Luggage and Leather Goods Manufacturers of America
  - Man-Made Fiber Producers Association
  - National Association of Hosiery Manufacturers
  - National Association of Uniform Manufacturers
  - National Cotton Council
  - National Knitwear & Sportswear Association
  - National Knitwear Manufacturers Association
  - National Wool Growers Association
  - Neckwear Association of America
  - Northern Textile Association
  - Textile Distributors Association
  - Work Glove Manufacturers Association

Mr. NEHMER. And, Mr. Chairman, the story that Mr. Moore told you could be repeated by representatives of each of the other industries here. We are available for any questions that you and the members of the subcommittee may have.

Chairman GIBBONS. I can see your concern. It seems to me that the tariffs are higher in industries related there at the table than they are in all other American industries. Nobody has a higher tariff than you gentlemen enjoy.

Isn't that correct?

Mr. NEHMER. No, sir.

Chairman GIBBONS. Well, who does have a higher tariff than you?

Mr. NEHMER. Well, the leather apparel tariff is 6 percent, for example. There is a wide range of tariffs represented here.

Chairman GIBBONS. But I'm talking about as a whole, you all have the highest tariffs, protective tariffs in the United States, the panel here does. Is that right?

Mr. NEHMER. I don't think it's true in the case of steel, Mr. Chairman.

Chairman GIBBONS. You've got better than that. You've got an agreement with everybody that produces steel, just about. You couldn't have any better than that. A limitation on imports.

Mr. NEHMER. Mr. Chairman, tariffs are forever. Agreements have time limits on them.

Mr. FENTON. If I might add, Mr. Chairman, on the subject of steel tariffs, the tariff on steel coming into the United States, which is, I think, 4.4 percent, is about half the Canadian tariff, and it is somewhat lower than the 5.4, or 5.3 percent which is the average——

Chairman GIBBONS. I'm not going to argue. Concerning protection as a whole, this panel of five people has a higher protection level than all other industries in the United States.

Mr. COOPER. Mr. Chairman, I cannot quarrel with that statement insofar as it relates to rubber footwear. Rubber footwear tariffs are high. Are higher than most other tariffs in the United States. Import penetration of rubber footwear products, however, is among the highest of any import penetrations in this country, close to 60 percent for fabric footwear, or about 53 percent for waterproof footwear.

Chairman GIBBONS. Well, what you're saying is high tariffs don't work.

Mr. COOPER. What I'm saying is although these tariffs were not cut in the Tokyo round, the level of import penetration today, particularly for fabric footwear, is very close to what it was at the end of the Tokyo round. Absent these high tariffs, you would not have even the 12,000 workers who remain in this industry.

The reason that high tariffs in the rubber footwear industry have nonetheless not prevented an import penetration of close to 60 percent is that 90 percent of these imports come from extremely low wage countries, Taiwan and Korea. This is a labor industry. Labor constitutes about 50 percent of the total product of the industry. If you want any rubber footwear industry at all in this country, I would respectfully request to you that the tariff level of the industry must be viewed in the context of the imports which

are now coming to this country, and whether or not we can level that off at about 60 percent instead of just throwing the rest of the industry away.

Chairman GIBBONS. Well, let me ask you all this: How do you feel about the proposal to auction quotas in these areas where we have quotas and things of that sort? One of our witnesses the other day said that it would produce about 8 billion dollars' worth of revenue for the U.S. Treasury if we auctioned the quotas that some of you all are protected by.

Mr. MOORE. Mr. Chairman, I'd like to comment on that, since the industry that I'm representing has a large number of quotas. We have not taken a position as a coalition on the subject of auctioning import quotas.

However, we have studied the issue very carefully, and I think that undeniably from an economic welfare point of view, it's certainly better for the quota charges to go to the U.S. Treasury than they are to go to quota holders in Hong Kong or other countries in the Far East.

I think that's more or less an accepted notion by all parties that the quota rent, as it's called, should be transferred to the Treasury.

However, I think there are some very serious questions that need to be asked as to how to implement it effectively and make sure there are no inequities created in that kind of operation.

Mr. NEHMER. Mr. Chairman, on the same point, I've made available to your staff 10 issues that would need to be resolved before going to an auctioning of quotas.

I think it's very easy to say let's auction import quotas, import licenses, but there are some major policy decisions that somebody would have to make.

Maybe Congress will just pass that on to the administration to do.

Chairman GIBBONS. Well, we're passing them on to the foreigners now to make the decisions, that is what it amounts to. I sort of trust our side a little more than theirs. But, you know, I'm not antiforeign, but——

Mr. NEHMER. I think it's a very complicated subject, and there are a lot of issues that have to be resolved before we go to an auctioning system, I believe.

Chairman GIBBONS. Do any of you doubt that over a period of 5 years this would raise about $8 billion?

Maybe more than that.

Mr. NEHMER. Well, that obviously is a very desirable outcome. We might not have to purchase the documents from the Ways and Means Committee if we had that increased revenue.

Chairman GIBBONS. We're going to find out what they're worth pretty soon. [Laughter.]

Well, I realize it would be complicated to do that, and one of the offhand suggestions that I've made is that if we require the auctioning of quotas that one, we don't do it immediately, that we give some breathing time to everybody to try to get their house in order on those; two, that in the introductory years that some of these quotas be distributed on the basis of historical use.

And three, of course, that all the antitrust laws and things of that sort would still be in effect, to prevent someone from cornering the market.

And four, if you don't use your quota, you lose it. And five, I would say, that the quotas ought to be transferrable. Those are just some of the things that I think offhand.

But I realize it is a change from the past, and any change is hard to adjust to. I would think we'd have to grant to the administration, to the people that auction the quotas a broad degree of latitude, and monitor them very closely. But I can't see that America would come out any worse than we do now.

My own real fear is that we'd build up a big bureaucracy around these quotas, and I'd rather not have that around. But it's overseas anyway; we're paying for it. So we might as well enjoy it.

Mr. Schulze?

Mr. SCHULZE. Mr. Chairman, I would like to thank our guests. I don't really have any questions. I appreciate their point of view. It's one that I've been sympathetic to for quite some time, and that's really the effort of this bill, to try to get to the root of some of these problems and see if we can solve them.

We appreciate your input, not only now, but over the years.

Mr. NEHMER. Thank you.

Chairman GIBBONS. Mr. Jenkins.

Mr. JENKINS. Thank you, Mr. Chairman.

I want to thank the panel for your testimony. I simply want to state that it's not just the industries that you represent that are experiencing difficulties. You are just on the firing line more often, probably, than other industries. But we are seeing, really, the entire deindustrialization of the Nation, and some people have no concerns about that whatsoever.

They think that we can become a successful service oriented nation. I reject that. I think that's a mistake. I think that's the wrong direction for our Nation to take. But unfortunately, as I see the import consumption ratio for high-tech products—so from 26 to some 40 percent since 1982. We are fast seeing the change in direction that the Nation is taking. I happen to agree with you not only for your particular industries, but for other manufacturing concerns around the Nation. I want to direct a couple of questions to you. As I look at it, it is true that you are protected, not only from tariffs, but also from quotas which concern a lot of people.

I wonder how Korea and Taiwan would feel about it if we immediately took off all quotas. Don't you think that China would produce everything that they're not producing?

Mr. MOORE. I might take a first crack at that, Congressman Jenkins. I think that many of the Far East suppliers that have grown tremendously, with very huge quotas in textiles and apparels really like the present system. They like it because it gives them guaranteed access to our market, and I think that you are quite right that if those quotas were removed, countries like Hong Kong, Korea, and Taiwan would suddenly have to scramble to get goods into our market, and would in a sense be competing head on with the People's Republic of China, and would very probably lose their market share.

Mr. JENKINS. They may become the champions of quotas.

Mr. MOORE. They may well be, sir. We found in negotiations that have gone on that Hong Kong garment makers have in fact been one of the strongest supporters for the bilateral agreement we have with them and the MFA which provides for these quotas.

Mr. JENKINS. Carlos, let me ask you this: I know that you were a negotiator with the State Department in the 1970's. The recent action of Turkey in demanding textile access if we were to maintain our military access there is this a common thing for demands to be made like that?

Mr. MOORE. I think these kinds of demands that directly link foreign policy objectives to some of the trade objectives of the foreign countries are becoming more common. They were much less common in the past. I think that perhaps the system, the textile import program, was in the past administered in such a way that it became clear that there were certain objectives which the U.S. Government would stick to in those negotiations, and they were not really drawn out and brought to a political level.

I think you have to admire the Turkish Government for using whatever tools it has at hand to try to achieve its objectives.

However, I think that the U.S. Government has an awful lot of cards which it could play. Afterall, we have the market which Turkey wants, and I think that a more rigorous implementation of the program over the years would have prevented this kind of thing from happening in the first place.

Mr. NEHMER. I might add, Mr. Jenkins, when I was negotiating textile agreements some years ago, even though what the Turks have done is much more public and more blatant than we used to see in the past, the issues raised by the Turks used to be raised by the State Department in suggesting to us that we need to be very liberal, more liberal in the negotiations that we had, because there were foreign policy interests of the United States that might be disrupted if we didn't make a favorable deal.

Mr. JENKINS. Your industries have generally been used time and time again, I would assume, for this type of concession.

Mr. MOORE. Yes, sir

Mr. JENKINS. Not publicly, but privately. Is that one of your fears about granting tariff cutting authority now as to what was used before. I would assume you would have the same fear about this round.

Mr. NEHMER. And we've had commitments before. I was reading the statements made by Ambassador Strauss in 1979 about what a great deal the Tokyo Round was going to be for agriculture and industry and labor, which we know it has not turned out to be that. We're wore off today than we were before the Tokyo round, and we say to you, please do not give the President the authority to cut tariffs in this round, or we will be the victims of that authority

Mr. JENKINS. Thank you, Mr. Chairman.

Chairman GIBBONS. John?

Mr. DUNCAN. Thank you, Mr. Chairman. I think it was a little bit unfair to say that as a group that you all are the most protected industries that we have, because I know some of you don't have as much protection as other industries in the country. For example, the bicycle manufacturers, I think you have very little protection,

if any, and also that your protection, in relation to your exports, certainly ends up with a minus instead of a plus for all of you.

I think that that's something that this committee, which I happen to be an ex officio member of—and I enjoy being here and I appreciate the chairman permitting me to ask questions—but I think it's something that we should take into consideration, and that's the exports and whether that balance out or whether it's a minus or not. And if we're going to group everybody together, then, I think you're going to end with a minus instead of a plus as far as protection.

But I do thank you for your testimony. It's been very interesting, and I know it will be quite helpful.

Chairman GIBBONS. Guy.

Mr. VANDER JAGT. Thank you, very much, Mr. Chairman.

I want to thank the members of the panel for their testimony. I apologize. I wasn't here to hear your testimony. I promise you that I'll read it.

The reason I wasn't here is I was doing what you are doing. I was downtown testifying before the International Trade Commission, and I was expressing a sentiment that I think most of you would concur with, so don't be too hard on me for not being here to hear your testimony.

Thank you all very much.

Mr. NEHMER. Thank you, Mr. Vander Jagt.

Chairman GIBBONS. Phil.

Mr. CRANE. Thank you, Mr. Chairman.

I, too, welcome the testimony of you this morning. In the summary statement and I believe this was Mr. Nehmer's summary statement, on page 1, talking about dumping. That's been one of the things that really sticks in my craw, that is, dumping by any exporter into U.S. markets.

Frankly, I think that whatever penalties are meted out, maybe it's not denial of access to market, but certainly more substantial monetary penalties should be imposed, and it seems to me that if a foreign exporter dumps once, the second time you really bang on him. And I think we've got a lot of work to do here in terms of punishing people who engage in that practice.

You're here representing many different industries. Which of these various industries have been subjected to dumping?

Mr. NEHMER. Mr. Crane, in just going through this list, I believe that virtually every—virtually every one of the eight groups has been involved in dumping cases of various magnitudes. Steel certainly, many of them; textiles and apparel; bicycle manufacturers; the Copper & Brass Fabricators Council recently filed a whole group of such cases.

The Lead-Zinc Producers Committee has had a couple of dumping cases. Leather products, the footwear industries, had a raft of dumping and countervailing duty cases.

Rubber footwear as well, and the specialty steel industry also. All of us then have been involved in the process of dumping and/or countervailing duty cases.

Mr. CRANE. Have you filed 301 cases to prevent these importers or exporters from coming into our markets and dumping?

Mr. NEHMER. Some of them have, yes, sir.

Mr. CRANE. Have they been successful?

Mr. NEHMER. The specialty steel industry, the footwear industry, at least two that I'm aware of, have filed 301 cases. Mike, do you want to comment on footwear?

Mr. KERSHOW. The U.S. nonrubber footwear industry brought a series of 301 cases back in 1982. Unfortunately, Congressman Crane, that process proved to be very frustrating for the industry. The U.S. Trade Representative, for a number of reasons I suppose best characterized as concerns of international policy, elected not to pursue the more important claims that were made in that case.

The footwear industry's basic claim was that the U.S. nonrubber footwear market, by reason of its fairly low tariff rates was among the most open in the world, while the other major footwear markets of the world were effectively closed through a variety of means, both tariff and nontariff, to import competition.

The result was that the great majority of world footwear exports came to the United States. That was the industry's major claim, the one they sought to have redressed, and unfortunately the U.S. Trade Representative elected not to pursue those claims, elected not to seek negotiated reductions in the barriers that other countries maintained for import competition in the footwear sector.

Mr. CRANE. If you'll yield for a moment, what countries were involved?

Mr. KERSHOW. This included Japan, Brazil, the European Community as a whole, which maintained a number of import restrictive measures, Spain, Taiwan, Korea, a number of major footwear exporting companies, and the major alternative footwear, major footwear markets of the world.

USTR did pursue a number of secondary claims brought in the complaint. For instance, there was recently a negotiated resolution of the claims brought against Japan, which were also tied up with trade in leather. But by and large, the nonrubber footwear industry found the 301 process to be extremely frustrating and unproductive.

The result, as I'm sure most members of the panel know, was that the industry was forced, within a couple of years to take action under the escape clause, section 201, a more protective or protectionist statute, to seek relief from this unrelenting import pressure.

That process, I'm sure everyone's aware, also resulted in some frustration, a unanimous ITC finding of injury, which unfortunately went unacted upon by the administration.

Mr. NEHMER. And the American Iron & Steel Institute, likewise.

Mr. FENTON. We have filed—the AISI has filed one 301 case. United States Steel Corp. filed another. Bethlehem Steel Corp. has filed a 201 case. And in the period leading up to the U.S.-EC steel arrangements, there were a tremendous number of cases filed by most of the leading companies in the steel industry.

They met with varying degrees of success, but I think it is fair to say that the President's steel program of import restraints that we have in place today is designed to provide some measure of the relief that supposedly the full enforcement of the unfair trading statute should have provided. For that reason, I think it's hardly fair to characterize the President's program or the regime under

which we are now living as any form of protection. It is rather a measure of relief from demonstrated unfair trading practices of the kind, Mr. Crane, that give you correctly so much concern.

Mr. CRANE. Well, I appreciate your testimony on this point, and as I said, I'm basically a free trader, but this practice of dumping by any foreign country in our market is inexcusable, and ought to be substantially penalized, even in the first instance.

I can't believe that dumping is accidental. That it's a case of not understanding the trade laws. But maybe the first time, just relatively modest, but expedited application of some penalties is in order. I really think we've got to do something in this area.

We've had testimony from many other industries that have suffered as you have, and I think that dumping is inexcusable. Unfair trading practices may get into more complicated categories, but dumping doesn't fall into that category.

I thank you for your testimony

Mr. JENKINS. Mr. Chairman, could I follow up on a question. On the shoe matter, you filed a 301 case, and later a 201. Did you prove your case to the satisfaction of all the commissioners in the 201 case?

Mr. KERSHOW. In terms of injury, yes, sir. That's correct. It was a unamimous injury.

Mr. JENKINS. How long were you involved in the 301 and the 201 cases?

What period of time transpired?

Mr. KERSHOW. Well, actually the 301 cases, I suppose, are just now coming to a conclusion. That's a 4-year process.

Mr. JENKINS. What relief have you received specifically?

Mr. KERSHOW. Under 301? I believe there was a negotiated, or some attempt to achieve a negotiated loosening of Japan's import quota on leather shoes. That's one item that was obtained. Quite frankly, though, Congressman Jenkins, that, while of interest to a number of firms in the U.S. nonrubber footwear industry, that export to Japan, find a market there for their goods, that is really not going to help the vast majority of firms in the industry.

There were also negotiations with Brazil about that country, in an effort to get that country to loosen some of its restrictions on imported footwear. They have effectively barred all imports of footwear from that country, while becoming a major, major force in the world footwear market.

I quite frankly am not aware at this time of the status of those negotiations, but again I would be pessimistic about anything very productive coming out of it.

Mr. JENKINS. So you have had 4 years of litigation in attempting to follow the U.S. law and you have received practically no benefits whatsoever after having proved your case.

Mr. KERSHOW. That's correct.

Mr. JENKINS. That's the usual procedure.

Chairman GIBBONS. Mr. Pease.

Mr. PEASE. Mr. Chairman, I'm sorry that I arrived late and have not even had a chance to look at the testimony. I'll try to do that at this point.

But just following up on that one question, you said you've had, in response to Mr. Jenkins, 4 years of experience and no results.

Do you think that that is a result of deficiencies in the law, or deficiencies in enforcement of the law, or some combination thereof?

Mr. KERSHOW. It's a difficult question, Congressman. I think there are certainly deficiencies in the section 301 statute, and I understand it's part of the purpose of the bill being considered by the committee, to remedy some of those deficiencies.

In our case, certainly, the major deficiency was the really unbridled discretion given to the President to make the ultimate decision on whether to grant import relief.

We found ourselves with a unanimous injury finding from a commission, after a very extended and thorough proceeding. And unfortunately their recommendation of relief was not implemented by the President.

My understanding is the bill currently being considered would not totally rectify that situation, but I believe it would restrict somewhat the discretion that the administration has in imposing remedies in response to these determinations, and I think that would be an important improvement in the law.

Mr. NEHMER. Mr. Pease, Mr. Kershow, I think, put it very nicely. Basically what it comes down to is the administration's view of the footwear industry, and this is not an industry, I gather, that the administration feels we need.

And I believe that has certainly colored the view of the White House and the people around the President when he, despite a unanimous finding of injury from the International Trade Commission, turned down import relief for this industry. It's incredible.

Mr. PEASE. Was that a 301 case or a 201?

Mr. NEHMER. 201.

Mr. PEASE. Thank you very much.

Chairman GIBBONS. Thank you all.

Mr. NEHMER. Thank you, sir.

Chairman GIBBONS. We now have a panel of the International Human Rights Law Group, Mr. Steven Schneebaum; United Electrical, Radio & Machine Workers of America, Mr. Lance Compa; and Mr. David Williams, senior research fellow, the Council on Hemispheric Affairs.

STATEMENT OF DAVID C. WILLIAMS, SENIOR RESEARCH FELLOW, COUNCIL ON HEMISPHERIC AFFAIRS

Mr. WILLIAMS. By agreement with my colleagues, I will testify first, since I will be testifying mainly on the background of this subject.

Chairman GIBBONS. All right, sir. We have just been interrupted for a vote. Let us go and vote, rather than interrupt you in the middle of your statement. We will be right back.

[Vote recess.]

Chairman GIBBONS. All right, sir. Let us resume, please.

Mr. WILLIAMS. My name is David Williams, and I am a senior research fellow at the Council on Hemispheric Affairs.

I thank you for the opportunity, Mr. Chairman, to appear here this morning and testify on behalf of the council.

COHA has a keen interest both in workers' human rights, and in strong trade unions as a pillar of democracy. It is, therefore, natu-

ral that COHA is a vigorous proponent of measures, such as we are discussing today, to incorporate in our trade legislation and practices measures to promote internationally recognized labor rights.

I first became acquainted with this issue when I had the privilege of serving in the Office of the Special Representative for Trade Negotiations, STR, from 1963 to 1969. While there I became acquainted with the effort by some of our more imaginative and creative officials to enlarge the General Agreement on Tariffs and Trade by adding to it a "social clause" to protect and promote workers' rights.

The proposal attracted me not only because of the potential benefit to millions of workers all over the world, but because of the good that it would bring to our own country.

Competition based on sweatshop labor conditions seems to me just as much an unfair trade practice as dumping, or the use of export subsidies. Obviously, it is unfair to our own workers as well.

In the years when I was at STR, a majority, though not all, of our unions supported a liberal trade policy. However, the trend was already going the other way.

By now, virtually the entire labor movement opposes such a policy. I believe that measures to use trade on behalf of workers' rights may help to bring a substantial portion of the U.S. labor movement back to the support of a liberal trade policy. Since I favor such a policy, I would welcome this turn of events.

I will skip over the history, which appears in my prepared testimony, which I imagine will appear in the record.

Chairman GIBBONS. Yes, sir. Let me assure you that it will all appear.

Mr. WILLIAMS. I just will mention in passing that in 1967 a bill sponsored by Congressman Dent was introduced as an amendment to the Fair Labor Standards Act. It would have authorized the President to limit imports unilaterally, if the Secretary of Labor found they were produced under conditions below those specified in the Fair Labor Standards Act and would cause injury to the U.S. economy.

It passed the House by an overwhelming majority of 340 to 29. The executive branch, however, opposed the bill, and took the position that the proper approach was to work multilaterally.

In 1970, your own committee recommended that the President take steps with respect to trade agreements which would lead to the elimination of unfair labor conditions that substantially disrupt international trade.

There is thus a long background and, recently, increasing momentum for action in the field of labor rights as it relates to trade. Not only is there added momentum; there is also added need. The United States is facing an enormous trade deficit, some considerable portion of which results from imports produced under substandard labor conditions.

Some exporting countries are seeking diligently to maintain this competitive advantage by cracking down on their workers. In particular, it is common in the case of the free trade zones which have been established all around the world for potential investors to be assured, explicitly or implicitly, freedom from trade union organization.

It is therefore very timely that Congressman Pease has introduced a bill, H.R. 4412, the Fair Trade and Economic Justice Act, that seeks to address the questions I have been discussing.

Let me conclude on a personal note. Last year I had the privilege of testifying for COHA before an interagency committee chaired by STR. I then urged that GSP benefits not be extended to Haiti because of its dismal record on workers' rights. Since then, of course, there have been changes.

I profoundly hope that the people of Haiti will recover their full human rights, including their rights as workers. Haiti can and must export its products to the United States, and other countries, but not through competitive advantages obtained by exploiting its workers. Thank you, Mr. Chairman.

[The prepared statement follows:]

PREPARED STATEMENT OF

DAVID C. WILLIAMS

Senior Research Fellow

Council on Hemispheric Affairs

My name is David Williams, and I am a Senior Research Fellow at the Council on Hemispheric Affairs. Mr. Chairman, I thank you for the opportunity to appear here this morning and testify on behalf of the Council on Hemispheric Affairs (COHA). COHA was founded ten years ago to promote the common interests of our hemisphere; to raise the visibility and increase the importance of the inter-American relationship; and to encourage the formulation of rational and constructive U.S. policies towards Latin America. COHA's Board of Trustees consists of the leadership of some of this country's major trade unions, professional organizations, and religious groups, as well as distinguished civic and academic figures, who have joined together to advance their common belief in representative government and pluralistic institutions. COHA has a keen interest both in workers' human rights and in strong trade unions as a pillar of democracy. It is therefore natural that COHA is a vigorous proponent of measures, such as we are discussing today, to incorporate in our trade legislation and practices measures to promote internationally recognized workers' rights.

It is also a matter of direct personal interest to me. For almost eight years I have been on COHA's staff,

concentrating on trade and labor issues. Somewhat before this period, I had the privilege of serving in the office of the Special Representative for Trade Negotiations from 1963 to 1969. While there, I became acquainted with the effort by some of our more imaginative and creative officials, notably the then Assistant Secretary of Labor, George L-P Weaver, to enlarge the General Agreement on Tariffs and Trade (GATT) by adding to it a "Social Clause" to protect and promote workers' rights.

The proposal attracted me not only because of the potential benefit to millions of workers all over the world, but because of the good that it would bring to our own country. Competition based on sweatshop labor conditions seems to me just as much as an unfair trade practice as dumping or the use of export subsidies. Obviously, it is unfair to our own workers as well.

In the years when I was at STR, a majority- though not all- of our unions supported a liberal trade policy. However, the trend was already going the other way. By now, virtually the entire labor movement opposes such a policy. I believe that measures to use trade on behalf of workers' rights may help to bring a substantial portion of the U.S. labor movement back to the support of a liberal trade policy. Since I favor such a policy, I would welcome this turn of events.

Having a social clause is not, after all, a new or revolutionary idea. The U.N. Charter states, in Article 55, that the United Nations "shall promote higher standards of

living, full employment, and conditions of economic and social progress and development." The U.N. Universal Declaration of Human Rights states in Article 23: "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work (and) to just and favorable remuneration insuring for himself and his family an existence worthy of human dignity." The U.N. International Covenant on Economic, Social, and Cultural Rights in Article 7 sets forth "the right of everyone to the enjoyment of just and favorable conditions of work, which ensure, in particular; Remuneration which provides all workers as a minimum with: Fair wages...A decent living for themselves and their families...Safe and healthy working conditions."

In COHA's own geographic area of concern, Latin America, the Revised Charter of the Organization of American States (OAS) sets forth in Article 31 as "basic goals...Fair wages, employment opportunities, and acceptable working conditions for all."

GATT itself provides in its preamble that relations among countries "in the field of trade...should be conducted with a view to raising standards of living and ensuring full employment." It incorporates by reference Article 7 of Chapter II of the 1948 Havana Charter, which states:

"The members recognize that unfair labor conditions, particularly in production for export, create difficulties in international trade, and accordingly, each member shall

take whatever action may be appropriate and feasible to eliminate such conditions within its territory."

Thanks possibly to Secretary Weaver's missionary work, there was significant interest in this area during and immediately after the Kennedy Round of trade negotiations. In 1967, a bill sponsored by Congressman Dent of the House Labor Committee was introduced as an amendment to the Fair Labor Standards Act (FLSA). It would have authorized the President to limit imports unilaterally if the Secretary of Labor found that they were produced under conditions below those specified in the FLSA and caused injury to the U.S. economy. It passed the House by an overwhelming majority (340 to 29). The Executive Branch opposed the Dent bill and took the position that the proper approach was to work multilaterally with other nations to develop international fair labor standards.

In 1970, your own Commitee (The Ways and Means Committee) recommended that the President take steps with respect to trade agreements which would lead to the elimination of unfair labor conditions that substantially disrupt international trade. Your Committee suggested that machinery be set up in such trade agreements to provide for: (1) the international recognition of basic principles with respect to earnings, hours, and conditions of employment; (2) the development of a complaint procedure on unfair labor standards, and (3) a system of periodic reports on labor conditions by all signatories to the agreement.

There was important further progress in the Trade

Expansion Act of 1974, the measure which authorized the President to enter into the Tokyo Round of Multilateral Trade Negotiations. Section 121 (a) (4) directed the President to seek "the adoption of fair labor standards and of public petition and confrontation procedures in the GATT."

During the Tokyo Round, considerable preparatory work was done in this area- by an inter-agency committee here in Washington chaired by STR; by the Nordic and Canadian governments; and by the International Confederation of Free Trade Unions (ICFTU) and other labor organizations. Negotiating positions were prepared and discussed among the interested parties. In 1978, however, the decision was made not to press for fair labor standards in the Tokyo Round. Apparently it was felt that to do so would unnecessarily complicate a successful conclusion of these negotiations. The U.S. decided instead to ask that the issue be held for the post-Tokyo work program of GATT. In 1980, the matter was referred to the International Labor Organization.

The action thereupon shifted to areas where the United States was in position to act unilaterally. Even though it was not implemented in good faith by the current Administration, the Caribbean Basin Initiative (CBI) specified fair labor standards as one factor to be considered in determining whether a particular Caribbean nation should have tariff- free access to the American market. New language in the 1984 extension of the

Generalized System of Preferences (GSP) prohibits the President from designating any country for GSP benefits which has not taken steps to afford internationally recognized workers' rights to its labor force. New language also in the 1985 reauthorization of the Overseas Private Investment Corporation (OPIC) restricts OPIC insurance and other operations to countries that have taken steps to implement laws respecting labor rights.

There is thus a long background and recently increasing momentum for action in the field of labor rights as it relates to trade. Not only is there added momentum- there is also added need. The United States is facing an enormous trade deficit, some considerable portion of which results from imports produced under substandard labor conditions. Some exporting countries are seeking diligently to maintain this competitive advantage by cracking down on their workers. In particular, it is common, in the case of the free trade zones which are being established all around the world, for potential investors to be assured (explicitly or implicitly) freedom from trade union organization.

The new interest in this subject found expression last month in the introduction by Congressman Donald Pease and others of HR 4412, the "Fair Trade and Economic Justice Act." This bill seeks to extend the application of internationally recognized workers' rights in two areas. First, the bill would make it a U.S. priority in the upcoming round of multilateral trade negotiations to seek the adoption of an additional article to GATT- the so-called

"Social Clause"- declaring that the exploitation of workers is an unjustifiable means for a country to gain competitive advantage in international trade. Secondly, the bill would amend U.S. trade law so as to treat as an unfair practice any competitive advantage a country derives in trade from the denial of internationally recognized workers rights.

Victor Hugo rightly wrote "more powerful than an army with banners is an idea whose time has come." After a long gestation, the time for the idea that the rules of trade should take full account of workers' rights has at last come.

Let me conclude on a personal note. Last year I had the privilege of testifying for COHA before an inter-agency committee chaired by STR. I then urged that GSP benefits not be extended to Haiti because of its dismal record on workers' rights. Since then, Duvalier himself has fled, but the practices of the Duvalier regime in many respects persist. I profoundly hope that the people of Haiti will recover their full human rights- including their rights as workers. Haiti can and must export its products to the United States and other countries, but not through competitive advantages obtained by exploiting its workers.

Chairman GIBBONS. Thank you, Mr. Williams. Now, do you all have a batting order that you have decided on?

Mr. COMPA. Yes. I will go next, Mr. Chairman.

STATEMENT OF LANCE COMPA, WASHINGTON REPRESENTATIVE, UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA

Mr. COMPA. I am Lance Compa, Washington representative of the United Electrical, Radio & Machine Workers of America.

I have submitted a prepared statement, Mr. Chairman, and request that it be included in the record.

Chairman GIBBONS. Yes, sir.

Mr. COMPA. I will try to summarize it in just a few minutes. I want to talk about the status of trade unionism in the Republic of Chile, because I think it provides a good example of why legislation that takes account of labor rights, and the rights of working people to organize and bargain collectively, should be attached to trade law and trade policy in this country.

I have had some personal experience. In 1972 I lived in Chile and studied labor law and collective bargaining under the previously democratically elected government that was overthrown by the Pinochet military coup.

I had many friends in the labor movement there, some of whom have had to leave Chile, some who have remained, and I have stayed in touch with them, and I have tried to stay current on the status of the trade unions there. I would like to speak about two sets of conditions in Chile that I think are instructive for purposes of the legislation that is being considered.

First of all is blatant outright repression, often physical repression that is evident to the naked eye of being an unfair labor practice.

The Catholic Church documented in 1985, 12 years after the coup—there have been many accounts of the brutalities that occurred in connection with the coup d'etat in the months that followed, but it is important to keep in mind that that kind of physical repression has continued.

The Catholic Church documented 67 cases in 1985 of arrests, beatings, torture, killings, exile, internal banishment, and other acts of repression against trade union leaders and activists for their union activities.

In 1982, a public employee union leader, Tucapel Jimenez, was abducted, shot twice in the head, had his throat cut, and thrown at the side of the road.

In 1985, last year, Manuel Guerrero and two of his associates in the teachers union suffered a similar fate.

So there has been this continued pattern of physical abuse and physical repression of unions in Chile. Two weeks ago, the government massed hundreds of combat-prepared troops and artillery in the area of the Chuquicamata copper mine to block a peaceful—first a mass, a Catholic mass, and then a march by copper miners at the Chuquicamata mine, demanding and seeking higher wages for their work. And that was blocked by that military action.

In addition to this kind of activity, though, there is a subtler form of legal repression that I think should also be closely looked

at by the committee in formulating trade policy and defining unfair labor practices overseas.

Under the labor code imposed by the military government in 1979, workers in enterprises with fewer than 25 employees—and the vast majority of businesses in Chile are small businesses that do employ less than 25 employees—those workers are prohibited from organizing trade unions. There is a minimum requirement of 25 workers to organize a trade union. That immediately excludes hundreds of thousands of workers from this basic right of association.

Collective bargaining in Chile is limited by law to the single workplace, not even to the single company. Workers in companies and industries there are prohibited from bargaining on a company-wide basis, or an industry-wide basis. They must bargain only at the local level with local plant management, which gives management a really insurmountable advantage in collective bargaining because then, they can just play off one location against another, or in an industry, one company can undercut another company, and it takes away a basic right of unions to defend themselves through coordinated bargaining or some kind of an industrial union approach.

Union leaders are required by law to be employees of the company with whom they bargain. They cannot be full-time employees of the union. This means that union leadership is always going to be vulnerable to reprisals by the employers—they are going to be at the mercy of employers—and it prevents the development of a professional, experienced, independent union leadership, which is best able to represent the interests of its members.

Under Chilean law, local union leaders must have 5 years of seniority in the company before they can hold themselves out for union office, and before they can hold union office.

And furthermore, they cannot have any record of political involvement in any way, and these people are barred from becoming union leaders.

The effect here is obvious. First of all, it prevents workers from selecting their own leaders. The workers may prefer to have a younger person in their local union leadership but the 5-year rule blocks it.

Second, any worker who is an advocate of his coworkers, or her coworkers on the shop floor, as he or she approaches 5 years' service, is then subject to being fired in order to avoid them becoming union officers. Strike votes in Chile must be taken in the presence of a magistrate or police officials, and the strike vote in Chile cannot be a secret ballot. It must be an open ballot, in the presence of authorities.

I think the intimidating effect here is obvious. When strike supporters are going to be identifying themselves in front of the authorities, it is certainly going to have a "chilling effect" on people voicing their true sentiments.

Under Chilean law, a strike can only last 60 days. After 60 days, the employees must accept the employer's last offer, or simply abandon their jobs, and let other workers take their places.

This obviously undermines any, even a pretense of collective bargaining. The employer simply has to wait out the 60-day period, and then the workers are gone and he has the deal that he wanted.

I could go on and on. There are many other examples, when you get into some of the finer details, but I think this has given a flavor of the kind of conditions that Chilean workers are facing.

There are not that many imports of manufactured goods from Chile that create terrible problems for American workers but we do compete in the copper market, to some extent in the coal market, and I am not familiar—our union is not connected with those industries and I am not personally familiar with it. I know there are theories of comparative advantage, and all this sort of thing, but I think it is clear that—for example—copper miners in Chile—and on January 30, 1986, the entire leadership of the copper miners' union was removed from office by the government on the grounds that they were full-time union officers instead of being employees of the copper mines.

And of course they faced these same conditions that I have just outlined. But Chilean copper companies certainly should not derive any kind of competitive advantage, or comparative advantage because of the exercise of these repressive labor laws, and I think by addressing the issue of labor rights and the violation of labor rights in trade policy, will at least have the effect of removing that as a basis for competitive advantage in the international marketplace.

[The prepared statement follows:]

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STATEMENT OF LANCE COMPA, UE WASHINGTON REPRESENTATIVE

before the

HOUSE SUBCOMMITTEE ON TRADE

April 17, 1986

LABOR RIGHTS IN CHILE

My name is Lance Compa. I am Washington Representative of the United Electrical, Radio & Machine Workers of America (UE). Our union represents manufacturing workers in a variety of industries and companies including General Electric, Westinghouse, American-Standard, Rockwell, Litton Industries, United Technologies, TRW and others.

UE urges the subcommittee to incorporate labor rights provisions into trade legislation now being considered. Events and conditions in Chile are a prime example of why such protections are needed.

I lived in Chile in 1972 and early 1973, studying labor law reform and collective bargaining under the Popular Unity government. I attended union meetings, management conferences and bargaining sessions. In the course of my research I met privately with many union leaders, union members and management officials.

I want to leave aside the question of economic difficulties in the Allende years and the degree to which they stemmed from bad government policies, or from the Nixon-Kissinger plan to "make the economy scream" after the failure of efforts to block Allende's assuming the presidency. The question before us now is labor rights -- the freedoms of working people to form their own

organizations, to choose their own leaders, to meet in democratic assembly to develop principles and programs and proposals on wages, hours and working conditions, to carry the needs and interests of their members to employers through good faith collective bargaining, and to carry the same needs and interests to their government through political action.

In 1972 I found a labor movement in the front ranks of those that enjoy such freedoms. In only two years of the Popular Unity government the number of workers who joined unions rose from one-third of the workforce to one-half. Labor law reform brought industry-wide bargaining for minimum wage and benefit standards, aiding thousands of workers in small enterprises.

Unlike most European and Latin American labor movements which are divided among federations reflecting different political philosophies, the Chilean CUT -- the national labor federation -- was a unitary body. Christian democrats, communists, socialists, liberals and conservatives all participated and held office in the CUT and its various union affiliates. They were open and often disputatious about their political differences, but they subordinated them to agreed trade union principles and a common labor program.

Our own National Labor Relations Act charges the United States federal government with "encouraging the practice and procedure of collective bargaining" -- a principle honored more in the breach than the observance nowadays. The Chilean Popular Unity government actually carried out such policies, seeking to help workers who tried to organize and bargain with

their employers. Chilean workers finally saw the government as an ally. This sentiment may rankle advocates of strict government neutrality in labor-management relations, but it reflected the reality of a country where historically government had weighed in heavily -- often in the form of strikebreaking troops and police actions that killed union members -- on the side of the employers.

Worker support for the Popular Unity government was confirmed in the March, 1973 legislative elections when the government coalition parties won 44% of the vote. It was the first time in history that an incumbent administration gained ground in mid-term elections.

Popular Unity had garnered 36% of the vote in 1970 when Allende became president. The previous 1964-1970 Christian Democratic government of Eduardo Frei, and the 1958-64 conservative administration of Jorge Alessandri, had also been elected with equivalent votes in a three-way race, but each of them then lost support in the mid-term elections.

In 1973 the opposition hoped that Popular Unity would fall below one-third of the vote, allowing them to override any Allende veto of conservative legislation. When the election results instead showed growing support for the government and the prospect of a Popular Unity majority in the next election, the military coup d'etat moved to the top of the right-wing agenda.

The terrible events following the brutal military takeover of September, 1973 have been widely recounted. Since most of the government's support came from working class, unionized sectors of the population, many union leaders and union activists were imprisoned or killed for their trade union roles.

Such outright physical repression was not just a phase, however. The Pinochet regime has continued a cycle of brutality against trade unionists.

In 1982, only days after issuing a public call for trade union unity, public employee union leader Tucapel Jimenez was seized, shot twice in the head and nearly decapitated. The same fate befell teachers union leader Manuel Guerrero and two associates last year. In all, sixty-seven persons were killed by security forces last year; many were union leaders or union activists. Last month copper union leader Rodolfo Seguel, who had earlier been imprisoned and removed from office by government decree, was arrested along with several other union leaders and over one hundred union members protesting human rights abuses. Two weeks ago the government massed thousands of troops in combat gear near the Chuquicamata copper mine to block a peaceful march by miners seeking higher wages.

Underneath the force and terror of such blatant labor repression is the subtler repression of restrictive labor laws promulgated by the Pinochet dictatorship. Even if there were no blood on their hands, government officials would still be engaged in massive labor rights violations by the operation of anti-union decrees. Under the terms of a 1979 labor code imposed by the government over union protests:

*trade unions cannot participate in political activity.

*workers in enterprises with fewer than twenty-five employees -- the vast majority of Chilean business -- are not allowed to form unions.

*Collective bargaining is limited to the level of the single workplace, barring company-wide or industry-wide bargaining.

*Union leaders must be employees of the employer with whom they bargain; they cannot be employees of the union.

*Local union leaders must have five years' seniority in the workplace and cannot have any record of political involvement.

*Strike votes must be taken in the presence of a magistrate or a police official, without a secret ballot -- strike supporters must openly identify themselves.

*A strike may only last sixty days, at which time workers must accept the employer's last offer or abandon their jobs.

*Authorities have carte blanche to search union offices, seize union books and records, impound union property and otherwise interfere in the affairs of the unions.

Barring unions from political activity violates basic rights of speech and assembly. Mandating a threshhold level of twenty-five employees to be able to form a union violates the organizing rights of thousands of workers in small enterprises. Prohibiting company or industry-wide bargaining gives employers an insurmountable advantage in negotiations, since they can simply play off one location against another.

Requiring union officials to be company employees leaves them vulnerable to management reprisals and retards the formation of experienced, independent union leadership. Demanding five years' service and no record of political action deprives workers of the right to choose their own leaders as they see fit; companies simply fire outspoken shop floor advocates as they near five years' seniority.

The chilling effect of an open-ballot strike vote overseen by the authorities needs little explanation. Many workers will not vote their true sentiments in such intimidating circumstances. Even if workers vote for a strike under these conditions, the sixty day limit invites employers to just wait them out rather than bargain in good faith. Obviously, when the outcome of a strike is predetermined in this way, it negates the right to strike.

The search and seizure of union property, and often the destruction of union records that follows, prevents the orderly function of the union as an organization. Moreover, the physical intimidation involved in these actions, and the fact that union officials have been kidnapped and murdered in such operations, deters workers from participating in union affairs.

In contrast to the vibrant, growing labor movement that represented nearly one-half the workforce in 1973, the Chilean labor movement today has been ground to a weakened fifteen percent of the workforce. Unions face employers in collective bargaining -- if it can still be called that -- with their hands tied by the labor laws and with the backdrop of thousands of unemployed workers desperate for jobs.

Under these conditions it is remarkable, even heroic, that a Chilean labor movement has survived and continues to function. But much more must be done to restore a minimum of respected labor rights in Chile. Our government, with its history of support for the military takeover and the Pinochet dictatorship, bears a heavy responsibility for labor repression in Chile. One place to begin righting accounts with workers there is to make violation of workers' organizing and bargaining rights an unfair trade practice under American law.

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Chairman GIBBONS. Thank you, sir. Very interesting. And now, Mr. Schneebaum.

STATEMENT OF STEVEN M. SCHNEEBAUM, MEMBER, BOARD OF DIRECTORS, INTERNATIONAL HUMAN RIGHTS LAW GROUP

Mr. SCHNEEBAUM. Thank you, Mr. Chairman. My name is Steven Schneebaum. I am a partner with the law firm of Patton, Boggs & Blow, and I appear here this morning on behalf of the International Human Rights Law Group.

I want to argue, if I might for a moment, in support of Mr. Pease's approach to incorporating unfair labor practices as unfair trade practices within an amended section 301 of the Trade Act of 1974.

I have just been informed, unfortunately, that my prepared remarks have been somewhat delayed in their arrival this morning, and with the chairman's permission, I would like to submit them for the record just as soon as they arrive.

Chairman GIBBONS. Yes. They will be included.

Mr. SCHNEEBAUM. Thank you, sir. I want to argue this morning that the approach of H.R. 4412 makes good sense as a matter of U.S. foreign policy, and also as a matter of U.S. international trade law. When a bill so neatly serves both objectives of the Congress, and of the country, then we submit that those are good arguments for its adoption.

As a matter of international law and U.S. foreign policy, the incorporation of internationally guaranteed labor rights as those kinds of rights to be protected by U.S. law is certainly consistent with the position that this country has taken as a signatory to the four human rights treaties during the Carter administration, as well as with this country's application of human rights norms to domestic litigation and to domestic and foreign legislation.

There are many areas in which, already, various acts of the United States are conditioned upon compliance with binding norms of international human rights law. Foreign assistance, for example, is already conditioned on foreign compliance with certain internationally guaranteed rights.

As this subcommittee is well aware, continuing as a designated beneficiary country under the generalized system of preferences is now conditional upon a country's observing certain internationally guaranteed rights, and in particular, labor rights.

So this approach not only is consistent with this country's position with respect to international human rights law, but would go far toward demonstrating to the rest of the world, and to our trading partners in particular, that we mean what we say.

Now also, though, as a matter of trade law, I would invite the members of the subcommittee to consider the purpose, the reason, the underlying basis for section 301. The underlying basis of that statute is to give Americans who are affected by cheating, by violations of the rules of international trade, access to their government, and to get their government to do something to help them out.

This country believes, and our trade laws state, that our trading partners are free to compete, to win or to lose, according to the

laws of the marketplace, but there are a number of things that our trading partners and that we ourselves are not permitted to do.

We are not permitted to sell below cost. We are not permitted to gain market share through export subsidies. And we submit that one of those things now internationally prohibited that should give rise to the same remedy, is the violation of international guaranteed labor rights.

Already, section 301, as most recently amended, gives the right of recourse to domestic industries and domestic persons affected by what the act calls "unjustifiable trade practices." The definition provided in the act for the term "unjustifiable" includes "any act, policy or practice which is in violation of, or is inconsistent with, the international legal rights of the United States."

A good argument can be made, Mr. Chairman, that the violation of international guaranteed labor standards is already an "unjustifiable act" within that definition. The Pease approach, in our submission, would remove all doubt, and would make clear the cause of action of a domestic industry or a domestic trade union, or a community, that is alleging that its commerce is affected by a foreign country violating those standards.

The expansion of section 301 that would be undertaken by H.R. 4412 is a rather technical one. Already, the generalized system of preferences legislation spells out the kinds of violations of binding norms that will give rise to barring a country from benefits under GSP.

We submit that precisely the same logic should apply in the context of section 301. There is no reason why American companies should be forced to endure competition in this country, or should be forced to lose markets overseas, as a direct result of foreign governments' violating labor standards international protected, and thereby, gaining unfair competitive economic advantages.

Those are the arguments in favor of the proposed approach. In our submission, H.R. 4412 is a rather technical and narrow change to the law, but one which states a great deal about where this country's heart lies, and our ability to bring together human rights policy and trade policy. Thank you, Mr. Chairman.

[The prepared statement follows:]

PREPARED STATEMENT OF
STEVEN M. SCHNEEBAUM, ESQ.
FOR THE INTERNATIONAL HUMAN RIGHTS LAW GROUP

HOUSE WAYS AND MEANS TRADE SUBCOMMITTEE
APRIL 17, 1986

INTRODUCTION

Mr. Chairman, Members of the Subcommittee, it is a pleasure for me to testify at today's hearing. My name is Steven M. Schneebaum. I serve on the Board of Directors of the International Human Rights Law Group and chair its Domestic Litigation Committee. I am also a partner at the Washington law firm of Patton, Boggs & Blow, where I devote a considerable amount of time to the litigation of international trade issues, including Section 301 cases. I have taught international trade law for four years at the Columbus School of Law, Catholic University.

The Law Group is a public interest law center based in Washington, D.C. Throughout its eight year existence, the Law Group has sought to promote awareness and to encourage implementation of the numerous statutes enacted during the last decade that relate human rights concerns to United States foreign policy.1/ The Law Group has previously testified before this and

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1/ These statutes include: Foreign Assistance Act of 1961, Section 116, 22 U.S.C. Section 215 (Prohibition against foreign assistance to gross violators of human rights); Foreign Assistance Act of 1961, Section 502B, 22 U.S.C. Section 230 (Prohibition against security assistance to gross violators of human rights); International Financial Institutions Action of 1977, Section 701, 22 U.S.C. Section 262d (United States must oppose loans to gross violators of human rights in internationl financial institutions); Tariff Act of 1930, Section 307, 19 U.S.C Section 1307 (Prohibition of the importation of slave-made goods); and Trade Act of 1974, Section 402, 19 U.S.C. Section 243 (Denies Most-Favored-Nation status to countries that deprive their citizens of the right to emigrate).

other committees on forced labor in the Soviet Union2/ and on Most-Favored-Nation (MFN) status for Romania3/ as well as the implementation of other statutes concerning aid and security assistance.

These statutes represent the mandate of Congress that the conduct of foreign policy reflect certain fundamental United States values, including respect for the dignity of the individual. Furthermore, these laws recognize and uphold the international community's consensus on the rights to be accorded to every human being. The policy represented in Congressman Pease's proposed legislation, H.R. 4412, which recognized the failure of foreign govenments to afford internationally protected labor rights as an unfair trade practice, represents a significant contribution to the developing body of United States and international human rights law. Moreover, the proposed legislation provides effective

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2/ Forced labor in the Soviet Union, Hearing before The Subcommittee on Human Rights and International Organizations of the Committee on Foreign Affairs of The House of Rep. and the Comission on Secutity and Cooperation in Europe, 98th Cong., 1st Sess, 6-17 (1983) (Statement of Amy Young, Executive Director.International Human Rights Law Group).

3/ Extension of MFN Status to Romania, Hungary, and The People's Republic of China: Hearings Before the Subcommittee on Trade of the Committee on Ways and Means of the House of Representatives, 97th Cong,. 2d Sess. 164-173 (1982) (Statement of Frank Koszorus, Jr., Attorney, International Human Rights Law Group).

Presidential Recommendation to Continue Waivers Applicable to Romania, Hungary, and The People's Republic of China, and to Extend The Trade Act Waiver Authority; Hearing before The Subcommittee on Trade of the Committee on Ways and Means, House of Rep. 98th Cong. 1st Sess. 275-281 (1983) (Statement of Frank Koszorus).

forums and mechanisms to enforce these rights, thus avoiding policies of non-implementation characteristic of many of the types of other human rights statutes.4/

Other witnesses have described for you the types of government practices that amount to violations of internationally recognized labor rights, and that would give rise to relief under the Bill. I will deal with two more general issues: First, I will consider the role of international law in general and international labor law in particular in United States policy formulation. Second, I will argue that unfair labor practices should be cited in United States trade law as additional examples of unfair trade practices.

THE ROLE OF INTERNATIONAL LAW

International law has played and must continue to play an important role in shaping United States public policy. As a party to the Charter of the United Nations, the United States accepts an obligation to promote and encourage respect for human rights.5/ We have accepted a similar obligation as a party to the Charter of the Organization of American States.6/ Although the Senate has not yet given its advice and consent to authorize ratification, the United States has an obligation to act in accordance with the principles set forth in the human rights treaties signed by President Carter in 1977.7/ United States

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4/ See generally, Cohen, Conditioning U.S. Security Assistance on Human Rights Practices 76 A.J.I.L. 246 (1982)

5/ U.N Charter Art. 1(3).

6/ O.A.S. Charter Art. 3(j).

7/ These treaties are: The International Covenenant on Civil and Political Rights, The International Covenenant on Economic, Social and Cultural Rights, the American Convention on Human Rights, and The International Convention on the Elimination of all Form of Racial Discrimination.

courts in appropriate cases apply customary international law to inform and interpret constitutional and statutory provisions.8/ The Law Group believes that the United States should give consistent recognition to international human rights norms in order to strengthen respect for these norms by other countries, and especially by our trading partners.

The protection of internationally recognized labor rights has old and deep roots. The International Labor Organization (ILO) was established in 1919 by the Treaty of Versailles, long before the approval by the General Assembly of Universal Declaration of Human Right. International labor standards developed by the ILO represent some of the first attempts in the modern era to enshrine and protect fundamental human rights. For example, the Right of Association (Agriculture) Convention, No. 11, was opened for ratification in 1921 and came into force in 1923. The Forced Labor Convention, No. 29, came into force in 1932.

The proposed legislation, through reference to 19 U.S.C. Section 2462 (a)(4), in drawing upon these international norms, defines "internationally recognized labor rights" as:

> (A) the right of association
> (B) the right to organize and bargain collectively;
> (C) a prohibition on the use of any form of forced or compulsory labor;
> (D) A minimum age for the employment of children;
> (E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

8/ United States v. Guy W. Capps, 294 F.2d 655 (4th Cir. 1953), aff'd on other grounds, 348 U.S. 296 (1955).

These protections have been incorporated into a wide range of international human rights instruments, developed through a variety of international bodies. The very degree of recognition of these rights and the volumes of interpretation giving their precise legal content conclusively establish the status of each of these rights in international law. I hope one example will suffice.

The rights to freedom of association is recognized in the following international instruments: Universal Declaration of Human Rights, Article 20; American Declaration of the Rights and Duties of Man, Article XXII; the International Covention on Human Rights, Article 11; the American Convention on Human Rights, Article 16; and the African Charter on Human and Peoples' Rights, Article 10. The ILO considers its Convention No. 87 on Freedom of Association and Protection of the Right to Organize, and Convention No. 98 on Application of Principles of the Right to Organize and Bargain Collectively, to be binding customary international law, even on members of the ILO which are not parties to these conventions.9/ Moreover, the Governing Body of the ILO has established a Committee on Freedom of Association to assess compliance by governments. The jurisprudence developed

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9/ See e.g., Complaint Presented on Behalf of the General Workers' Federation Against the Government of Mauritius, ILO Committee on Freedom of Association case No. 709 (1975) 58 ILO Official Bulletin, series B, No. 3 at 22.

through the Committee included over 1,000 cases by 198010/ These are, of course, rights long taken for granted in the United States.

Three important points may be drawn from the preceding discussion. First, the rights listed in the proposed legislation have a strong foundation in international law. This legislation does not represent an attempt to force high and perhaps idiosyncratic United States standards on countries that cannot afford such labor protections. Nor can this legislation be interpreted as an unfair attempt to encourage protectionism. Rather, this legislation seeks to prevent unfair competitive advantages gained directly through the exploitation of foreign workers who are denied these basic rights. Second, the implementing agencies and reviewing courts will have a detailed body of law to consider when making decisions about which standards to apply and whether an alleged practice contravenes these standards. Much of the vagueness found in other human rights legislation may be avoided here. Finally, on a more general level, protection of these rights will demonstrate to all the depth of the American commitment to the principles we espouse.

UNFAIR LABOR PRACTICES AS UNFAIR TRADE PRACTICES

Arguing only from the human rights perspective, one could end at this point by saying that the United States should seek to promote the international recognition of workers' rights and

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10/ Swepston, Human Rights Complaint Procedures of the International Labor Organiation, in Guide to International Human Rights Practice 85 (Hannum, ed. 1984).

that trade legislation is an effective mechanism to achieve that end. This argument, however, ignores the effect that violation of fundamental labor rights has on United States trade.

The logical nexus between labor abuse and artificially low prices for foreign goods is clear. Denial of rights like freedom of association or freedom to organize and bargain collectively creates unequal employment relationships; employers gain superior positions when negotiating wages, thus lowering the total cost of production. The use of forced labor, likewise, cuts the cost of production. Unfair price advantages result directly from these repressive practices.

It is precisely these forms of subtle cheating that Section 301 of the Trade Act of 1974 is intended to address. Price advantages unfairly obtained discriminate against United States products both at home and abroad. Section 301 has proven to be an effective mechanism for protection of United States trading interests. Few of our trading partners can defend their right to cheat. Most cases filed have resulted in settlement at the consultation stage.

By focusing on trade practices and competitive impact, the labor rights provisions in H.R. 4412 complement existing United States protection of international labor rights. Congress has previously conditioned GSP benefits11/ and extension of insurance by OPIC12/ on government compliance with internationally recognized

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11/ 19 U.S.C. Section 2462.

12/ 22 U.S.C. Section 2191.

labor rights. The proposed legislation expands labor rights protection to all countries that engage with trade that affects the United States, not just countries eligible for these development programs. H.R. 4412 permits the United States Trade Representative wide discretion to craft appropriate remedies. The GATT negotiation requirement will provide a mechanism for protection of all GATT Contracting Parties and thereby will engender a climate of concern and vigilance for the protection of these rights.

CONCLUSION

The labor rights provisions contained in H.R. 4412 are in accord with existing United States legislation. The legislation protects rights defined under international law by providing a mechanism for the enforcement of these rights at the instance of those affected by their violation. By focusing on internationally recognized labor rights, the proposed legislation neither creates unfair protection for United States products nor nullifies legitimate price advantages that foreign countries can provide. Rather, this legislation only seeks to eliminate competitive advantages gained through the failure of foreign governments to respect basic internationally recognized labor rights. These advantages are unfair, and this mechanism encouraging their elimination makes sense both as trade policy and as fundamental foreign policy.

Thank you..

Chairman GIBBONS. Thank you. Mr. Pease, would you like to examine these——

Mr. PEASE. Mr. Chairman, I do not really have any questions. I think it has been excellent testimony this morning. These three witnesses are all obviously good judges of legislation and I appreciate their support of my approach. Thank you.

Chairman GIBBONS. I appreciate the interesting testimony that you have presented here today and we will certainly give it very, very serious consideration. Thank you very much.

The National Foreign Trade Council, Mr. Katz; the Aerospace Industries Association, Ms. Sherbeck; and the Synthetic Organic Chemical Manufacturers Association, Mr. Block.

I do not think Mr. Katz has arrived yet, so we will go to the Aerospace Industries Association next. Ms. Sherbeck.

STATEMENT OF CELIA M. SHERBECK, VICE PRESIDENT, CIVIL AVIATION, AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA, INC., ACCOMPANIED BY LINDA CAMPANELLA, PRATT & WHITNEY AIRCRAFT CO.

Ms. SHERBECK. Good morning, Mr. Chairman and members of the subcommittee. My name is Celia Sherbeck and I am vice president for civil aviation with the Aerospace Industries Association of America, Inc.

With me this morning is Linda Campanella of Pratt & Whitney Co., a division of United Technologies Corp.

Ms. Campanella is the chairman of, and representing today, the AIA Trade Policies Committee of our international council. I am testifying today on behalf of AIA which represents the Nation's major manufacturers of aircraft, aircraft engines, helicopters, spacecraft, missiles, space launch vehicles, and the related components and equipment. I appreciate this opportunity to appear before you to discuss the aerospace industry's views and objectives relative to congressional and executive branch initiatives to reduce this Nation's record trade deficit.

AIA believes the answer lies in promoting U.S. competitiveness at home and abroad, not in closing our markets to imports.

The aerospace industry is an export-oriented, indeed, an export-dependent industry. In 1985, aerospace exports averaged 23 percent of aerospace sales, and 8 percent of all U.S. exports. The industry employed more than 1.3 million people in 1985. We expect to add 35,000 new men and women to that work force in 1986. Our industry consistently contributes positively to the U.S. balance of trade. Last year, the industry exported $12.1 billion more than it imported, despite formidable foreign competition in domestic and international markets. Total exports in 1985 were $18.1 billion.

We believe that in the face of record trade deficits, the U.S. Government and industry, together, should be on the offensive, exporting wherever we can, and working to bring down trade barriers wherever they exist. We must resist the temptation of protectionism. Protectionism encourages retaliatory actions by other countries. Protectionism reduces innovation, and efficiency, because it does not encourage import-injured industries to adjust in ways that make them more competitive. Ultimately, the U.S. consumer pays

the price for protectionism. Further, protectionism undermines the international trade agreements that the United States has worked for decades to foster.

We believe in bolstering, not abandoning, the multilateral trading system embodied in the General Agreement on Tariffs and Trade. The United States should renew its support for an open, international trading system. The United States must remain committed to negotiation to achieve free and fair trade. At the same time, the United States must, with as much energy and commitment, be willing to invoke international rules when unfair trade practices threaten or impede U.S. competitiveness.

We are pleased to see that many Members of Congress have introduced bills to correct the U.S. trade deficit, by seeking to promote trade rather than to restrict it. We support those congressional initiatives that would enhance U.S. competitiveness by improving incentives for risktaking in capital formation, by promoting research, development and innovation; ensuring that adequate and competitive U.S. export financing is available to match that which is available to our foreign competitors; by strengthening the multilateral trade negotiating and monetary systems; seeking to remove unfair or illegal foreign barriers to trade; and eliminating unilateral U.S. disincentives to U.S. exports.

We are especially supportive of provisions in such bills that stress U.S. renewal of its support for an open international trading system by negotiations to achieve fair trade.

Trade negotiating authority is part of almost all the omnibus trade bills pending in Congress. We support a new round of multilateral trade negotiations. We feel that the United States and its trading partners benefited significantly from the last such round. We welcome a new round in part, because it will afford us an opportunity to revisit the Tokyo round agreements some 6-plus years after their implementation. I think all signatories have gained important insights after these years of experience with the codes. We have learned, for example, that the codes need strengthening. We have learned where they work and where they do not.

The Tokyo round resulted in the GATT Agreement on Trade in Civil Aircraft. The aircraft agreement is the only sectoral trade agreement negotiated under GATT auspices. So we are unique; there are rules of the game designed specifically for the civil aircraft sector. Review of the aircraft agreement has been an ongoing process over the past 6 years. In 1983, after serious negotiation among signatories, it was agreed to expand the duty-free coverage provided under the agreement to an additional 25—TSUS—items on the Tariff Schedules of the United States. And last month, in Geneva, the United States Government held consultations with representatives of Britain, France, and West Germany, to improve the application of certain nontariff barrier provisions of the agreement. I was privileged to represent ISAC I on aerospace equipment and the AIA member companies, as an adviser to our government negotiators during those talks. The aerospace industry supports these consultations as a means to strengthen the discipline and improve the enforcement of nontariff barrier provisions, particularly with respect to government subsidies and government involvement in the marketplace. The ongoing process of review and consultation

allows periodic improvements, as necessary, to reflect changes in the international marketplace for civil aircraft and parts, whether or not a new round occurs.

In a new round, there are a number of objectives we should pursue. We strongly urge the U.S. Government to seek to expand the number of signatories to the aircraft agreement, particularly to include aircraft producing and aircraft trading nations that have not yet signed.

Because of U.S. "most favored nation" policies——

Chairman GIBBONS. Excuse me. Is Brazil a part of this?

Ms. SHERBECK. That is what I was about to say. Australia, Brazil, Indonesia, and Israel enjoy the benefits of the agreement without having to assume any of its obligations.

We would also urge the U.S. negotiators to pursue reform of article XVIII of the GATT which authorizes "infant industry protection," but without rules for removal of that protection when the industry being protected competes successfully in the marketplace. The concept of "sectoral graduation" is one which we urge the administration to promote. Since you bring up Brazil, I will add that Brazil is one of the countries that enjoys this kind of protection; at the same time it is the sixth largest aerospace industry in the world.

Aerospace industry representatives have already begun to work with the executive branch in developing specific objectives a new round. We are hopeful that improvements will be made to other Tokyo round codes, including subsidies, antidumping and government procurement codes. An issue that affects all codes and GATT agreements past and future, is dispute settlement. The aerospace industry agrees that dispute settlement should be a priority agenda item for the new round. The process must be strengthened and streamlined if the GATT system is to maintain its credibility and relevance.

With respect to logistics, AIA would urge strongly that the U.S. negotiators be authorized to send back to Washington self-contained agreements for approval as they are concluded, rather than having to hold them hostage to the final product. Some issues will be resolved early in the round; others will take far longer. Improvements to the Tokyo round codes, for example, could be negotiated and concluded early in the new round, whereas negotiations of new disciplines for trade in services or investment, for instance, can be expected to be quite protracted. From our perspective, if improvements to the agreement on trade and civil aircraft are concluded early in the round, we request that the administration be in a position to seek congressional approval and to implement the changes prior to the formal conclusion of the round, 5 or 10 years down the road.

Mr. Chairman, in closing, I would like to note that in addition to my written testimony, I would like to submit a copy of AIA publication entitled, "Trade and R&D Policies." This document outlines in greater detail than my remarks today, the aerospace industry's proposals for fiscal and monetary policies, continuing multilateral negotiations, and effective trade and R&D policies. The theme of that paper, however, is the same as the theme of my remarks, namely that the United States can protect its interests by promot-

ing its traditional strengths, and that our long-term, national goals should be to remain competitive in the word market for decades to come.

As AIA concluded in that document, the role of the United States as a leader of the free world trade, will be enhanced by enactment of policies that deal efficiently with the real causes of the trade deficit, rather than politically expedient policies that deal only with the symptoms.

That is the challenge that faces Congress today.

Thank you very much, Mr. Chairman, I would be pleased to answer any questions that you or other members of the subcommittee may have.

[The attachment follows:]

Trade and R&D Policies

An Aerospace Industries Association Proposal

January 1985

Aerospace Industries Association of America, Inc.
1725 DeSales Street, N.W.
Washington, D.C. 20036

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Summary

Only the most insular of Americans can be complacent about the United States' trade deficit and apparent loss of competitiveness in many high technology industries. The bolstering of the nation's sagging trade performance is critical to achieving a full and sustained economic recovery, and to a strong U.S. international position. It is therefore time for the United States to adopt a dynamic, aggressive and positive program to remain a viable contender in the world marketplace.

The aerospace industry, from its vantage point as the leading manufacturing exporter — and one that is facing increasingly strong government-supported foreign competition — believes the United States requires a strong, clear focus on the two key factors affecting the marketplace: trade policy and R&D policy. The industry believes a national commitment in these areas will obviate any need for the type of industrial strategy in which government picks winners, or involves itself in economic micromanagement.

In early 1984, the Aerospace Industries Association outlined a full program for revitalization of U.S. market competitiveness in the first edition of this paper entitled *Trade and R&D Policies: An Aerospace Industries Association Proposal.* Since that time, a number of specifics addressed by AIA have been dealt with by Congress, among them: establishment of the Foreign Sales Corporation (FSC) export tax incentive in place of the Domestic International Sales Corporation, and legislation permitting greater R&D cooperation among industrial firms. It is gratifying that many members of Congress and the administration are extremely aware of the need to increase U.S. industrial investment and, ultimately, U.S. competitiveness.

Some of the issues which AIA raised in its earlier policy document have not been resolved and some new issues have arisen in the intervening months. In addressing these issues, the AIA basic philosophy has been that national trade and R&D policies must:

- Be national objectives of the highest priority;
- Focus on stability and continuity of programs and policy;
- Have broad-based support from Congress, the administration and the public; and
- Center on a cooperative relationship between government, industry and academia.

It is especially important that government and industry, while working together, maintain their traditional dichotomy of roles. The role of business is to analyze the market, to create, to innovate and to sell products. Industry must:

- Review its own international policies, practices and structures in order to give exports an even higher priority;
- Increase funding for research and development; and
- Increase capital investment to improve productivity, encourage innovation, enhance product quality and lower unit cost, in order to be more competitive here and abroad.

Government can best support fundamental, high risk, long-term payoff research, and can create a policy environment in which business can function effectively and competitively. Government must:

- Root out disincentives and create research, investment and export incentives for industry;
- Promote free enterprise rules in the international marketplace; and
- Intercede where foreign competition is unfair or illegal.

In the long term, the interests of aerospace and other U.S. industries will be best served by the most fair and open international trading system possible, without government support of industrial firms except in areas of fundamental, high-risk research. In the short term, the United States cannot unilaterally disarm economically any more than it can militarily. It must support its businessmen against unfair trade practices — in instances where direct government support exists in such forms as targeting, subsidies and a variety of barriers to open trade. In the near term, therefore, a variety of incentives are needed to establish a fair competitive environment for American businessmen in a world market where competitors are often national governments rather than private firms.

Government support against unfair trade practices is neither industrial policy nor protectionism. In fact, the United States must resist the temptation of protectionism, a very real danger as U.S. industries are hard hit by foreign market advances. Protected industries, however, do not work as hard to be competitive; in the end, protectionism weakens, it does not strengthen. Protectionism breeds retaliation. Protectionism undermines the international trade agreements that the United States has worked for decades to foster.

Rather than protectionism, stable, long-term trade and R&D policies should be the keystone of a program to enhance U.S. world market competitiveness. Commitment to such policies will help America regain its competitive momentum, capitalize on its basic strengths, and be assured the economic health essential to stability, strength and national security. Establishing these long-term joint trade and R&D policies is not a simple task. Consistent support for these must be maintained through different administrations, and those making policy must recognize the extent to which other seemingly unrelated areas affect these policy goals.

2 This new Congress and administration are faced with a number of issues that will be of primary importance to the success of external trade and R&D policies. Among such issues, the budget deficit, tax reform, industrial policy and technology transfer stand out.

Budget Deficit

While a budget deficit, in and of itself, does not constitute a serious economic problem, a series of budget deficits of the magnitude of those anticipated over the next few years almost certainly will. As the recovery matures, government borrowing tends to crowd out industrial investment by raising the interest rate. This is a particular problem for industries making R&D decisions where long payback periods make R&D investments particularly sensitive to interest rates. Further, high U.S. interest rates make dollar-denominated investments particularly attractive to foreign investors, thereby increasing the demand for dollars, and further elevating the exchange value of the dollar on a cost parity basis. The high and increasing value of the dollar seen over the last few years works against U.S. exporters, fosters a high trade deficit and fuels the fires of protectionism.

Finally, in the long term, continued budget deficits will preclude the use of fiscal policy as a tool for moderating the effects of the next downturn in the business cycle. This will adversely impact all U.S. business decisions — particularly long-term investment decisions in R&D, capital equipment and productivity — and U.S. international competitiveness will become the victim.

Tax Reform

As attention focuses on the budget deficit, the issue of fundamental tax reform — under heavy scrutiny in the 98th Congress — will take its place on center stage politically.

Tax reform, along with spending cuts, will be offered as new tax legislation to help offset the substantial deficit, and the effect the deficit could have over the next few years on the health of the economy. Just as important, for many, is the need to make the tax system more fair, more simple, and a more effective stimulant of savings and investment.

Under review will be a number of quite different types of tax reform, from modifications of the existing tax system aimed at expanding the tax base to different tax systems such as a flat tax or a value added or consumption tax. Each proposal must be examined in light of its effectiveness in accomplishing the traditional aims of the U.S. tax system. Of paramount importance to national trade and R&D policies are tax incentives for savings and investment — particularly productive investments — and tax policies related to exports and foreign operations. The impact of the various proposed tax reforms in these areas must be clearly and credibly spelled out.

High technology companies replace much of their existing plant and equipment at a rapid rate and must continually make new R&D investments. Tax policies relating to treatment of R&D and short-lived equipment are therefore extremely important. High technology companies must also be competitive in a worldwide market, and are thus extremely sensitive to the effect of tax policies relating to foreign operations and to exports.

The need to encourage a high level of investment in these areas has been clear to lawmakers in recent years; hence, the existing incentives and moves to strengthen them. Elimination of existing investment incentives can be justified only if the newly structured system will *clearly* stimulate sufficient, offsetting savings and investment.

Tax reform, if it is to come, must be a carefully taken step. Broad economic goals are really a composite of individual and sectoral goals. How each of these are affected will have a resounding impact.

Industrial Policy

Considerable debate has emerged during the past few years on the need for the United States to institute a formal industrial policy. While every government — including the United States Government — has some effect on industry and therefore has an industrial policy whether or not it is defined as such, the current controversy centers on whether government should guide investments in those industries seen as most important to the nation. Advocates of industrial policy feel U.S. industrial performance compares unfavorably with other countries, notably Japan, and that corrective governmental action is necessary. The 98th Congress saw the introduction of numerous diverse industrial policy proposals, but most contained certain key elements including:

- Establishment of a national bank,
- Appointment of a business-labor-government council, and
- Targeting of resources to specified industries.

While such a targeting system may work well in other countries, it is likely to be ineffective — worse, counterproductive — for the United States for two primary reasons: 1) it would subject investments to short-term political decision making, and 2) it could legislate new roles for government and industry — roles which have been demonstrably unsuccessful.

Some advocates of an industrial policy believe that resources should be channeled into high technologies to keep the United States at the forefront. Others believe that resources should be targeted towards smokestack industries to rebuild our industrial base. Realistically, the political solution to this dilemma is likely to be to channel a portion of funds into each area or to fluctuate with the changes in administration from high technology to smokestack industries. Either solution would distort industrial investment without producing a clear national direction. On a smaller but no less important scale, choosing among alternative technologies or programs for funding would also be subject to political pressures.

Investment decisions should be made by American businessmen who have the skill and an established track record for identifying which products and services will be successful. As demonstrated by the unsuccessful synfuels program, the government does not have the expertise or ability to identify new commercial products or to react quickly enough to new market opportunities.

The only industrial policy needed in the United States is that which uses greater government/industry cooperation to encourage the principles of free and fair trade and supports R&D in any industry. When critical problems do arise in specific industries, the government should respond on a case-by-case basis, free to take necessary action but always mindful that all industry/government interactions comprise de facto industrial policy.

Technology Transfer

Although government and industry must guard against the leakage of militarily critical technologies to a potential adversary, technology transfer is an essential and desirable concomitant of international trade which plays a critical and growing role in the economic vitality of the U.S. and other free world nations. Technology is transferred in many ways . . .

> patent literature, university training, government and private publications, conferences, trade shows, career development programs, reverse engineering, product exports, licensing, direct foreign investment, joint ventures, and both government and industry programs for co-production and co-development.

. . . much of this transfer is desirable in the interests of stimulating innovation and technical progress.

National security concerns have heightened the dialogue on the sensitive issue of technology transfer. Obviously, the possible transfer of critical military technology to potential adversaries necessitates the imposition of certain technology controls. This industry has consistently advocated such controls. Nonetheless, this need must be balanced by the recognition that advanced technology is a commercial asset and most certainly not the sole province of the United States. While the total level of R&D effort and the supply of technological know-how of the United States exceeds that of its principal competitors, the rate of growth in many key areas of industrial innovation by some competitors, particularly Japan, has surpassed that of the United States over the past decade. Other nations have been able to come abreast or take the lead in several important areas. The United States must recognize that:

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- Efficient access to foreign technology is now more important than ever to the U.S. economy and the defense establishment;
- The ability of the United States to unilaterally control the international flow of leading-edge, militarily critical (dual use) technology has been reduced, consequently:
  - The importance of multilateral agreements to control the export of militarily critical technology to the East Bloc has increased; and
  - Unilateral controls on free world trade by the United States are not only ineffective in accomplishing their objective but inevitably result in the loss of U.S. competitiveness and place the U.S. military in a position of increased dependency on foreign nations for leading-edge technologies.
  - The efficient transfer of technology is critical to the success of technology-oriented firms in international trade. Novel international business relationships are being developed for intra-industry cooperation which improve business prospects for their participants while providing jobs, income and access to the rapidly growing technology of other nations to the U.S. domestic economy. These agreements work without violating proprietary information of each participant or security controls on U.S. exports.

A National Trade Policy: A Proposal

Introduction

The United States is confronted by an international trade situation which approaches crisis proportions. The U.S. trade balance has been in deficit with the exception of a few years since 1971. The dollar's exchange rate in relation to the currencies of other leading trading partners has made U.S. products more expensive in foreign countries, and competing goods less expensive in the United States. Final 1984 trade deficit figures are expected to exceed $100 billion. The most significant negative development in the U.S. trade situation in recent years was the 1982 decline in trade in manufactured goods of $16 billion — from an $11.8 billion surplus in 1981 to a $4.3 billion deficit. In 1983, the deficit in manufactured goods increased substantially to $31.0 billion. The motor vehicle, metal working and consumer electronics sectors have been particularly hard hit.

The aerospace industry, on the other hand, remained the leader in 1983 among manufacturing exporters — as it has been for over 20 years. Aerospace shipped $16.1 billion abroad and imported $3.5 billion for a net trade balance of $12.6 billion.

American private sector firms must compete in a marketplace increasingly characterized by government support of exporters. Immediate U.S. policy action is necessary if American exporters are not to lose further ground. A great deal is at stake. The nation must maintain its economic vigor, to which exports contribute by creating jobs for thousands of Americans and a higher standard of living. A position of strength in the world community requires, too, that the United States maintain a solid position as a trading nation.

While working to establish a sound economic environment — that is, to reduce the budget deficit and correct the imbalance and volatility in exchange rates — the nation cannot fail to recognize the growing importance of exports to that economy and, therefore, the need to aggressively promote exports. Unfortunately, the United States has not been sufficiently committed to export expansion and, in many instances, existing policy has served to retard rather than stimulate exports. Sound approaches to export policy and procedures — the simplification of export licensing is one example — have been spelled out in the Export Administration Act of 1979, but the United States has failed to aggressively implement them. And while the present Administration has framed a positive, U.S. interest-based policy on sales of military equipment abroad, there is need for an assurance of policy continuity — from administration to administration — in this area. Further, in the absence of bilateral agreements, the effect of unilateral export restrictions has been to encourage military sales by other countries. Changes in the international situation will inevitably necessitate new instances of sales restraint, but these must be addressed within a sound, long-term policy framework.

Future policy must root out impediments to export growth. At the same time, the United States should repudiate "negative" approaches, avoiding reliance on protectionism: tariffs, quotas, so-called "voluntary" restraints, domestic content legislation, and so forth. Such policies have at best a short-term positive effect and have serious long-term negative consequences by encouraging similar and potentially stronger retaliatory and punitive actions by other countries, reducing innovation and efficiency and driving up prices. In the end protectionism will weaken, not strengthen the nation.

At the same time, the United States should not mimic other nations' approaches to industrial trade policy. It must avoid the pitfall of substituting government judgment for that of business management's in the allocation of industrial resources to meet the demands of the marketplace. The United States must instead develop an approach based on its strengths and values. Strengths include enormous material resources, demonstrated excellence in R&D, unparalleled capacity for technical innovation and a large, highly skilled populace. A dynamic new trade emphasis should stress these "positives," should set clearly-defined goals, and enable the United States to meet competition head-on with aggressive, consistent domestic and international policies and action. Above all, however, established policy must be aggressively pursued by the government agencies concerned.

A trade policy can only be effective if government and industry work in concert, both sectors taking measures to reshape those relationships which serve to retard export expansion, and to create instead an environment of mutual support.

There are many areas in which certain legislative and regulatory actions would enhance exports, especially of high-technology products. A few of the more important ones are discussed in the following pages.

Export Tax Incentives

For decades, most developed nations, recognizing that their economic well-being is critically dependent on exports, have employed an array of export incentives for their businesses and industries. These incentives have often been tax incentives that are provided either directly by the statutory laws of the various countries or indirectly through the administration of the tax systems of those countries. During this period, the United States has basically had only one export tax incentive, the Domestic International Sales Corporation (DISC). In hearings relating to the DISC legislation in prior years, the United States Treasury Department identified many of the extensive direct and indirect tax incentives for exports provided by other major developed countries.

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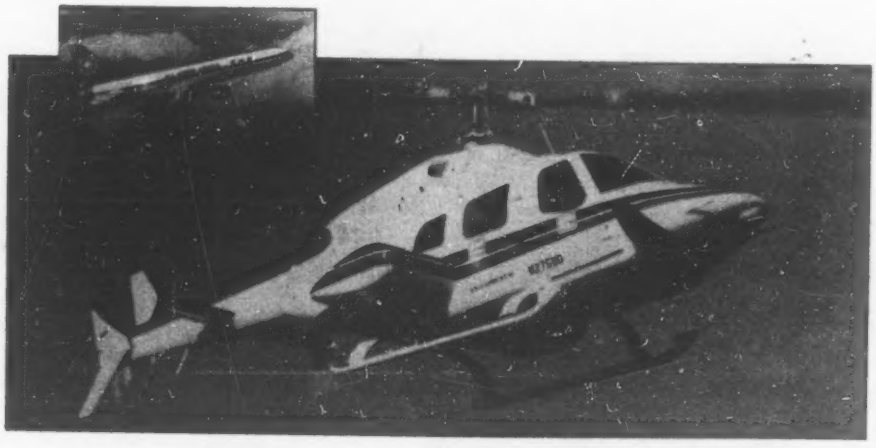
In response to U.S. trading partners' complaints that DISC was an illegal subsidy under the terms of the General Agreement on Tariffs and Trade (GATT), the Reagan Administration developed a substitute incentive, the Foreign Sales Corporation (FSC). This



proposal was incorporated into the 1984 Deficit Reduction Act (P.L. 98-369), and took effect on January 1, 1985.

The new incentive excludes some of the less desirable DISC provisions: the FSC exempts from tax the income of the export entity both when earned and when repatriated, rather than simply deferring tax; the incremental feature of DISC — which was inefficient and discriminatory in the application of the intended tax incentive — is eliminated; and, deferred taxes accumulated under the DISC incentive are forgiven.

Enactment of the FSC legislation by the 98th Congress was a positive step in respect to not only maintaining and strengthening U.S. export markets, but also, having this export tax incentive conform to GATT rules in order to protect U.S. exports from foreign retaliation. However, if the current trends in foreign competition continue, the FSC incentive may have to be upgraded in order to keep U.S. exporters on an even playing field.

The 1984 Deficit Reduction Act also included provisions that extend for two more years the current moratorium against allocating and apportioning research and development expenses to foreign source income, as required by Treasury regulation 1.861-8. The aerospace industry strongly urges that Congress take action to modify these regulations on a permanent basis to provide that U.S. R&D expenses are allocated solely to U.S. income. The allocation formula of Section 1.861-8 represents an incorrect interpretation of Sections 861, 862 and 863 of the Internal Revenue Code as they relate to the foreign tax credit; the effect of 1.861-8 is to tax the same earnings twice and deny an R&D deduction. Thus, this section may give rise to an unintended and undesirable incentive for U.S. companies to perform more research outside the U.S. in order to avoid such penalties. Furthermore, Congress should act to extend the prohibition to the allocation and apportionment of such expenses to export income derived through a FSC.

At the present time, the source of income from the sale of products can depend upon where the sale technically takes place. Where products are manufactured in the United States and sold abroad the income on the sale is considered effectively to arise 50 percent from within and 50 percent from without the United States. It is the industry's position that this rule should apply regardless of where the sale takes place. Thus, the rules of Internal Revenue Code sections 861-863 for determining the source of various items of

income should be changed to provide that all income from sales of domestically-manufactured goods with an ultimate destination abroad (even if the first sale is to a U.S. export trading corporation or other governmental or unrelated private entity) should be treated as arising 50 percent from foreign sources and 50 percent from domestic sources. On such sales, the passage of title and risk of loss would not be relevant. This will relieve U.S. companies of the necessity of passing title in foreign countries, which sometimes use such a step as an occasion to impose a tax.

A small but important change that should be made in our export tax policy would be to defer the current taxation of advance payments received with respect to contracts to perform services abroad and, in certain cases, of the manufacture of unique products for sale abroad. Although taxpayers on the completed contract method of accounting who manufacture and sell goods abroad are entitled to full deferred tax treatment of advance payments received, the regular, existing tax rules are too restrictive in the case of certain foreign transactions. In less developed countries, the legal remedies available to a contractor are restricted and may even be abrogated with a change of government, but receiving a large advance payment protects the contractor against this risk. Taking such advance payments as income when received, prior to the recognition of related expenses which would reduce that income, operates as a disincentive to these transactions.

In addition to the above measures, the United States Government should undertake a current, formal study of the export incentives provided by other developed nations, to assure that with enactment of the FSC, the export incentives of the United States are comparable to those of other nations. The study should consider extending FSC benefits to cover the provision of services abroad by U.S. companies. Specifically, the Departments of Treasury and Commerce, with help from the United States Trade Representative, should report to the President within a reasonable time period — such as two years — with recommendations on an improved trade incentives policy.

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Export Finance

Among the many factors contributing to the U.S. balance of trade and payments problem, and one of primary concern to American industry, is the provision by foreign governments of an array of unfair, trade distorting export financing subsidies. These include government-supported loans, guarantees and insurance programs below market levels, insurance against exchange rate fluctuations, and a variety of other direct and indirect subsidies.

In a world where comparable products, services and technology are widely available, financing terms can be the critical factor in securing and maintaining an export market. The only institution available to U.S. exporters as a means of competing with foreign government-supported financing is the Export-Import Bank (Eximbank), a self-sustaining entity which, over the long run, does not utilize taxpayer funds.

A major advantage of U.S. exports — and Eximbank financing — is the fact that volume production drives down unit costs to customers: manufacturing programs not based on foreign sales potential could be priced out of both U.S. and foreign markets. Thus, Eximbank financing is vital to export sales, to correction of the U.S. trade deficit and to the U.S. economy in general.

In 1983, Congress amended and renewed the Bank's charter for an additional three years. While retaining both of the original twin mandates — that the Bank be both competitive and solvent — Congress strengthened and clearly gave first priority to the competitive mandate, acknowledging the Bank's "...primary function of expanding U.S. exports through fully competitive financing" (P. L. 98-181). To specifically counter and neutralize the use of mixed credit financing, and to encourage negotiations to end this particular type of export credit subsidy, Congress directed the Bank, in cooperation with the Agency for International Development (AID), to establish tied-aid credit programs. Addi-

tionally. Section 1912 of the charter was amended to broaden the standard for identifying subsidized sales in the U.S. market, and the Treasury Department inquiry into a complaint is accelerated to occur within a 60-day framework.

These and other changes, taken together, might be expected to enhance the U.S. export position. However, policies adopted by the Bank previous to the charter's renewal have erected a formidable set of stumbling blocks to obtaining export financing: the up-front fee of two percent on all loans effectively adds a half percent to the interest cost; and, in the case of aircraft loans, a series of stipulations severely restricts loans unless competition can be proven. Moreover, financing for follow-on aircraft purchases has been discouraged.

Additionally, Bank policy in two important areas is not adequately defined. First, lease/purchase financing is becoming increasingly important as an aircraft financing technique in the export market; Eximbank's down payment requirement of 15%, however, mirrors that required for purchase financing support and one of the major advantages of leasing (no down payment) is thus compromised. Additionally, there is little or no mechanism for supporting operating leases. Second, Eximbank currently has no consistent position with respect to financing used aircraft exports. Today and in the future, export sale of new aircraft will depend on the aircraft manufacturers' willingness to take trade-in aircraft on a scale that has not previously been experienced. If U.S. manufacturers are to have any success in reselling these used aircraft, Eximbank must be willing to support such sales.

While the worldwide recession was undoubtedly a significant reason for depressed export loan demand during the 1983 and 1984 fiscal years, increased demand for financing can be expected as the international economic recovery continues. But, given the limitations on the availability of financing, combined with the Bank's failure to comply with the new emphasis on its competitive mandate, U. S. exporters may increasingly choose not to bring their business to the Bank. The resulting artificial decline in demand could be erroneously interpreted as a signal that funding cuts below the proposed FY 1985 level ($3.86 billion for direct loans, $10 billion for guarantees) are justified. 9

Clearly, there is a pressing need for new international agreements on export financing — with the ultimate goal of eliminating government subsidies and achieving financing at market rate and term. For the interim, though, Eximbank must be maintained or other nations will have no incentive to move in that direction. Aggressive implementation of the competitive mandate — as intended by the 98th Congress — and direct loan and guarantee ceilings sufficient to meet any and all financing offers are necessary signals to foreign competitors of the U.S. government's intention to combat the practice of officially supported export financing. Eximbank must also act aggressively to demonstrate the U.S. resolve to discourage government-subsidized incursions into the U.S. domestic market.

The aerospace industry does not advocate that the United States emulate the kind of direct government/industry involvement and support which have come to characterize its trading competitors' efforts. Yet foreign government-owned consortia, targeted industries and the like are here to stay. Only an institutionally strong and adequately funded Eximbank will provide the United States' foreign competitors with a true incentive to adopt non-subsidized market rate and market term financing, thus neutralizing the effect of government supported financing in product selection.

Multilateral Trade Negotiations

Even though the United States is facing tough competition from abroad in high technology markets, it can maintain its current position in a fair and open trade environment. If, however, foreign governments limit U.S. industry's access to markets through tariff and non-tariff barriers, further U.S. market share declines can be expected.

The great majority of countries producing civil aircraft — the United States, the European Economic Community, Japan, Canada and Sweden — are functioning within an "Agreement on Trade in Civil Aircraft," part of the Multilateral Trade Negotiations (MTN) which took effect on January 1, 1980. The Agreement sets forth policy objectives encouraging the continued worldwide development of the aeronautical industry with fair and equal opportunities, on a commercially competitive basis, for all manufacturers and operators, free from the adverse trade effects of governmental support of civil aircraft development, production and marketing. In addition, the Agreement eliminates tariffs on all civil aircraft and engines and on most parts. Duties on flight simulators, foreign civil repairs and parts for civil aircraft classified for customs purposes under numerous specific tariff headings have also been eliminated.

The Aircraft Agreement incorporates many important nontariff provisions which require that purchase decisions should be based on commercial and technical factors. Specifically, it states that governments should not apply unreasonable pressure on airlines or manufacturers to purchase from particular sources; require offset production; or attach inducements, such as landing rights or economic sanctions, to sales of civil aircraft. The U.S. government should act in a timely fashion and at a high political level to counteract foreign government marketing practices that contravene the Agreement and distort trade. The government should make clear that the U.S. will match to neutralize those practices. Such action may be necessary to counter unfair practices in the near term, but may also be the only means of leverage to achieve improvements in the government-supported Agreement on Trade in Civil Aircraft. Export financing is not addressed within the context of this GATT Aircraft Agreement. The OECD made an agreement in 1975 known as the Aircraft Standstill that sets maximum repayment terms according to the type, size and propulsion of export aircraft. The Standstill applies to large jet transports, general aviation aircraft and helicopters. The four major free world large jet aircraft producing nations — France, Germany, the United Kingdom and the United States — function under the Commonline Agreement. The Commonline is an informal understanding, confirmed by letters among governments, that they will adhere to certain minimum rates and terms.

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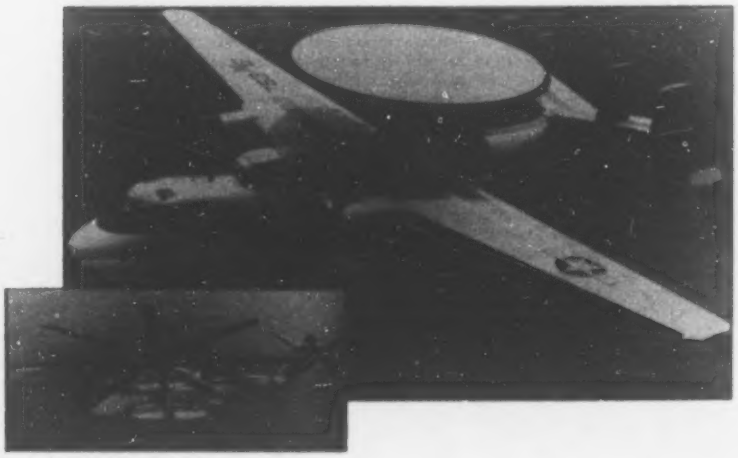
The European Community has announced its intention to negotiate on matters related to aircraft export financing as a whole rather than as separate nations — as in the Commonline. The aerospace industry fully supports continued negotiations to reach an



agreement that would supersede both the Standstill and the Commonline to reduce or eliminate market distorting practices. As a first step to reaching this goal, upcoming negotiations should focus on:

- Expanding the coverage of the agreements to include all types of aircraft, particularly helicopters and light aircraft;
- Seeking the participation of other producing nations not currently party to the agreements, namely: Brazil, Israel and Indonesia;
- Eliminating all forms of subsidized export finance worldwide; and
- Eliminating government support such as loans, and guarantees or insurance in the home markets of producing countries.

In addition to the improvements in the existing aircraft trade and financing agreements noted above, the United States should continue to negotiate expanded multilateral agreements which place worldwide trade in aerospace products and services on a technical and commercial basis. Specifically further efforts are needed to:

- Eliminate all government subsidies in product development, production and marketing;
- Expand coverage to all aerospace products and services including space systems and launch services; and
- Place leasing transactions for aerospace products on a commercial basis.

Export Controls

Although it recognizes the paramount concern of national security, the aerospace industry is concerned that trends in the development of controls on technology exports may undermine economic and technology leadership. The approach exemplified by the Department of Defense Directive 2040.2 on international technology transfer broadens the scope of technology control by adding "sensitive" and "significant" technologies in addition to "critical" technologies. Such measures could severely impact aerospace exports, one of the few areas of U.S. international trade that consistently shows a large surplus, and it could limit U.S. companies' opportunities to compete in multinational ventures. A more balanced approach from the standpoint of both national security and national economic interests is to limit the scope of controls on technology to a manageable, truly critical set of technologies to which access by U.S. adversaries can actually be denied.

11

The reauthorization of the 1979 Export Administration Act — which expired in September, 1983 — offered an opportunity to significantly improve the statutory guidelines for the implementation of U.S. export controls without compromising national security. While the language of the 1979 Act had struck a reasonable balance between the use of export controls for national security, foreign policy or short supply considerations and the need to promote exports, the interpretation and implementation of those provisions have often had a negative impact on trade without any substantial gain for national security and foreign policy.

Among the problems encountered, the Militarily Critical Technologies List (MCTL) is at the heart of matters. Overly long and detailed, this should be kept to a minimum, determined to a great extent by the foreign availability of technology and goods. Further, application of export restraints must be multilateral, since unilateral controls seldom achieve the desired effect and would leave the market open to U.S. competitors. This is best accomplished through a strengthening of COCOM — the coordinating committee of all NATO countries, except Iceland and Spain, plus Japan — which has developed policies and practices for the control of goods having a strategic military value in Communist countries. The U.S. Government should take steps toward strengthening COCOM in such a way as to improve the consistency and uniformity of interpretation of the rules by all members, and to strengthen enforcement mechanisms.

The United States should acknowledge the concept of contract sanctity, prohibiting the application of unilateral foreign policy controls to existing contracts for the term of the contract. U.S. companies will not be accepted as reliable sources of supply if they are required by the government to default on their contractual obligations, or where there is a possibility of default. West/west trade with COCOM countries should be eased as well by new and simplified license procedures. Consideration must be given to a more general license category as a possible alternate to the individual validated license for many types of technology transfer among all free world countries. Such a license could be assigned to firms that demonstrate ability to control militarily critical technology, and it could cover only long-term, well-defined business relationships such as with affiliates, co-venture partners, licensees, customers and foreign national employees. It could authorize multiple exports and re-exports over an extended period where adequate transaction records exist for audit. By making use of the commercial safeguards for proprietary data and know-how which are applied by companies that operate internationally, such a license could reduce the nonessential administrative load on export control agencies and free them for higher priority export cases.

The 98th Congress adjourned without passing an amended reauthorization of the 1979 Export Administration Act, a consequence of deep-seated disagreements over the Defense Department's statutory role in reviewing export licenses to non-Communist countries and the distribution of enforcement responsibilities between the Commerce Department and the Customs Service. While the reauthorization process will have to be repeated in its entirety by the 99th Congress, the House-Senate conference committee that struggled unsuccessfully to produce a compromise did make some progress in several key areas, which address several of the aforementioned recommendations. Renewed legislative efforts to reauthorize the act should retain these agreements, which included mandatory annual updates of the Militarily Critical Technologies List, streamlining of license applications procedures, qualified contract sanctity, the establishment of a Comprehensive Operations License, the elimination of licensing for spare parts exports (where there is a previously licensed item) and the extension of relaxed COCOM export control procedures to non-COCOM countries who have established bilateral agreements with the U.S. on control and enforcement systems.

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Additionally, the Commerce Department's proposed revisions in the regulations governing distribution licenses — which would stress the role of exporters' internal control programs and update the list of products ineligible for shipment under a distribution license — should be implemented. These changes represent a positive step towards more effective balancing of the need to prevent diversion of sensitive technology against the need to ensure the competitiveness of American exports in the international marketplace.

Summary

Current world circumstances underscore the fact that the economic, political and military futures of the United States are inextricably linked. Unfortunately, the United States' economic difficulties are compounded by lack of consistent, effective and aggressive export expansion policies. The situation can be corrected if government and industry work together to develop and vigorously implement such a policy. A national export policy must:

- Establish exports as a high national priority;
- Endorse trade policies that repudiate protectionism;
- Reflect a view of trade as a national investment in higher employment levels, increased tax revenues, faster GNP growth and as a means of arresting trade deficits and inflation;
- Minimize regulatory procedures and other disincentives that inhibit export expansion;
- Expand programs to offset and work toward elimination of advantages of foreign competitors;
- Provide tax and other incentives to encourage industry investments which improve productivity, encourage innovation, improve quality and lower unit cost in order to be more competitive in international markets; 13
- Enforce the Multilateral Trade Negotiation agreements to insure American companies are not unfairly penalized by measures employed by other nations to increase exports;
- Work for the further extension of trade rules in order to achieve a fair, competitive world trade environment;
- Strive to reduce the excessive credit competition that characterizes international trade and take firm retaliatory action against countries that provide exporters with preferential credit terms;
- Include well-articulated plans and programs to use weapons sales abroad in furtherance of U.S. foreign policy;
- Provide an assurance of policy continuity on sales of U.S. military equipment abroad as well as sales of military equipment produced through multinational programs. New instances of sales restraint, necessitated by changes in the international situation, must be addressed within a sound, long-term policy framework; and,
- Promote broader acceptance — by the Federal Government, industry, organized labor and the public — of the beneficial relationship between increased exports and a healthy economy.

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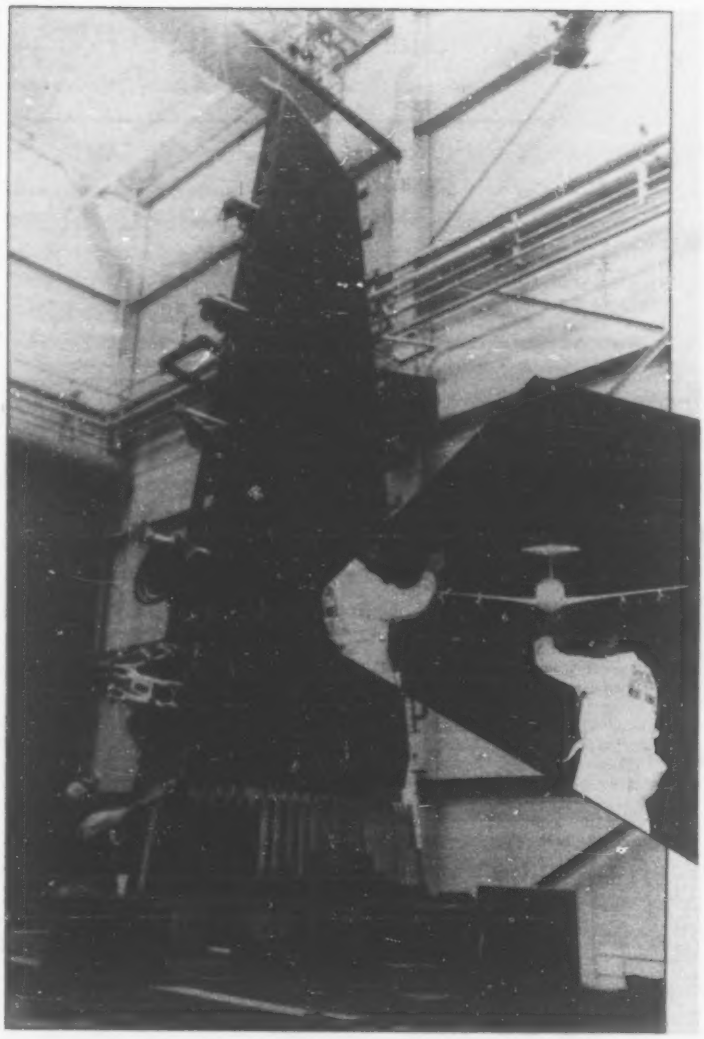

A National Industrial R&D Policy: A Proposal

Introduction

For most of this century, the United States dominated world trade — its marketplace success based largely on a broad technological superiority. In the past quarter century, however, governments and manufacturers in Europe, Japan and elsewhere have invested heavily in upgrading their technological capabilities. By and large, they have been successful and, as a result, the United States has ceded top ranking in some industries. Even among high technology industries, where the U.S. trade performance has been most impressive, the technology gap has narrowed to the point where it is sometimes difficult to measure.

Despite American efforts to negotiate a more equitable trade environment, it is unrealistic to expect that we can negotiate out of existence all of the advantages our foreign competitors enjoy. Our best opportunity to revitalize the U.S. international trade performance lies in a bold, new technological thrust. We must bring to the marketplace products of such clearcut superiority that their technical excellence outweighs whatever non-technical marketing attractions the competition may offer. Then we must support the technology with a new, positive trade thrust.

The United States has not lost its technological *capability*, only its momentum. In order to regain momentum, the administration, Congress and the American people must recognize that preeminence in science and technology is of paramount importance to the U.S. economy, the nation's security and its standard of living.

Government must approach the fostering of industrial research and development with a comprehensive policy that accords higher priority to R&D; encourages more effective cooperation among government, industry and the academic community; and stimulates industrial R&D aimed at creation of superior products for the marketplace. From the standpoint of near-term national competitiveness, the policy should be broad enough to include "implementing technology" — such efforts as applied research, exploratory development, advanced development and manufacturing technology, which serve as the bridge between basic research and new products.

In aerospace, where U.S. industry still maintains a technological edge, there is opportunity for revitalizing American competitiveness through emphasis on technologies with the greatest payoff potential. An Aerospace Industries Association study, *Aerospace Technology for the 1990s*, details benefits that might be expected from a focused technology thrust. In some cases, gains in cost reduction could be as much as 30-50 percent with similar increases in performance parameters. Such gains mean immense benefits to U.S. aerospace product competitiveness, but they will require an investment in essential technology by both government and industry.

Federal R&D expenditures for basic R&D in aerospace and other areas is moving upward as a percent of GNP, but after more than a decade of neglect. To redress this, a national industrial R&D policy should advocate really significant increases in government support of R&D over the long-term. An industrial R&D policy should also advocate incentives that will encourage industry to make the large investments demanded by a focused R&D thrust.

Legislative and regulatory actions that would enhance the industrial R&D process are detailed on the following pages.

R&D Tax Incentives

Increased U.S. industry expenditures for R&D will help to strengthen the technological position of the U.S. in international competition. This is particularly true among high technology industries, such as aerospace, where R&D expenditures must be increased and sustained at high levels if the United States is to cope successfully with the competitive challenge it faces.

In the Economic Recovery Tax Act of 1981, the administration and the Congress recognized the need for additional research by providing a 25 percent credit for certain research costs. This credit, however, has proved to be inequitable in the aerospace industry. First of all, the credit operates as an incentive only for increased research expenditures, above a company's historic level of outlay; it provides no incentive for companies to maintain continued, sustained research programs. Economics is a critical factor in undertaking every research program, whether the program represents a higher level of effort or continuation of an existing effort. The arbitrary denial of the credit based upon continuing research activity will mean that many meritorious projects will not be undertaken, and what would otherwise lead to an increase in total U.S. research activity will not occur.

Most research programs in the aerospace industry are of a long-term nature, spanning three years or longer. Allowing a credit only for "incremental" costs discriminates against long-term research programs. Once a new long-term program is undertaken, assuming other programs remain constant, the credit will apply only to the early costs. The full costs of new, short-term programs will qualify.

The incremental feature of the credit works to the detriment of the typical aerospace company whose expenditures, though high, may fall below an earlier level due to cyclical
16 peaks and valleys in R&D outlays. The credit can have a distorting effect by providing an incentive for more work to be performed at the beginning stages of a new program where normally such work would be performed at a later stage. There may be an incentive to defer a project until a following year. There is an element of unfairness here in that companies which have maintained their research activities over the years are penalized vis-a-vis those companies which have not.

AIA therefore believes that the current provisions of the statute should be modified to provide a meaningful level of credit, which could be somewhat less than the full 25 percent, for continued, sustained research activity. Furthermore, any tax incentive for R&D expenditures should be provided on a long-term, if not permanent, basis. The 25 percent R&D credit, for example, is scheduled to terminate at the end of 1985. Even with the option to extend a credit beyond its "sunset" date, the uncertainty entailed is disruptive from a business planning standpoint.

Another problem with the existing credit is that some expenditures necessary for a successful research program are excluded, for example, certain IR&D and computer software development. All research and experimentation expenditures should qualify for the credit or else unfair application of incentives among programs will result.

For R&D to have real value, it must be translated into new and improved products. Frequently, the person performing the research is not the same person who undertakes its commercial application. Under present law, purchased technology is treated as an asset and is subject to a relatively long period of amortization. To encourage accelerated translation of R&D into successful products by companies best able to do so, the cost of acquired research, including unpatented know-how, should be subject to amortization over 60 months.

The aerospace industry realizes that in the short run, effective incentives will involve an obvious reduction in revenue to the U.S. Treasury. In the long run, however, an investment in such incentives will pay dividends in the form of increased tax revenues as new and improved products enhance the competitive position of the United States in the world market.

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Independent Research and Development

In any policy intended to stimulate American technological advancement, one of the most important areas for consideration is Independent Research and Development (IR&D): a government term for that part of a company's total R&D program that is company-initiated, company-directed and company-funded to improve the company's competitive posture. The cost of IR&D is allocated to overhead and is generally sought to be recovered from sales of all products and services of the company, both government and commercial.

Much of industry's IR&D offers exceptional benefits to the Department of Defense. It has been pointed out in congressional testimony that almost none of the major new technologies of this century was conceived as a result of a military requirement; the conception and initial exploration of most major defense technology advances were carried out by scientists and engineers in industry and the academic community, working in an environment that allowed and stimulated novel thought, enabling them to make independent decisions regarding new R&D thrusts. Through IR&D a pool of industrial talent applies its imagination and expertise to future defense needs; additionally, DoD benefits from stronger competition among defense contractors.

One might think that IR&D, clearly of great benefit to the nation, would be universally lauded. Unfortunately, the process is little understood, and this lack of understanding has resulted in persistent criticism and the lack of strong support necessary to maintain healthy IR&D programs. DoD has reacted to criticism by imposing heavy administrative requirements and stringent negotiating postures on its contractors.

Under existing government procedures, the process works like this: larger contractors are required to negotiate "advance agreements" in which the amount of IR&D costs otherwise allowable under domestic defense contracts are limited; historically, an average of only 70 to 80 percent of costs have turned out to be allowable for inclusion in overhead under domestic DoD contracts. Due to business mix, the industry average for recovery under DoD contracts is about 40 percent of total IR&D costs. DoD's leverage comes from the fact that if a company does not accept the ceiling offered by DoD, then — by law and regulation — the amount which would otherwise have been established as a ceiling is reduced by an additional 25 percent, a penalty on the contractor for failing to agree with the government's proposed ceiling. Such forced cost sharing and heavy administrative involvement can only work to reduce potential benefits in both national defense and U.S. competitiveness. Because of its value to national interests, IR&D should be stimulated rather than restricted. 17

The national industrial R&D policy should strongly affirm that IR&D is an absolutely essential foundation for expanding both a company's and the nation's technology base, and should foster bolder, long-range IR&D progress. IR&D costs should be fully allocable as an element of recognized overhead costs in the pricing of government contracts. A national R&D policy should favor continuance of IR&D with special effort to assure the "independent" factor; it should eliminate unnecessary administrative burdens and paperwork that give rise to wasteful costs and divert funds from technical effort.

In the aerospace industry's view, DoD should increase negotiated IR&D/B&P (Bid and Proposal) ceilings and hence recovery from the current 80 percent level to 100 percent of reasonable costs incurred. In short, the aerospace industry supports the summary recommendation of the Grace Commission, which states: "Independent Research and Development costs should be recoverable by defense contractors in the same manner as other bona fide overhead expenses."

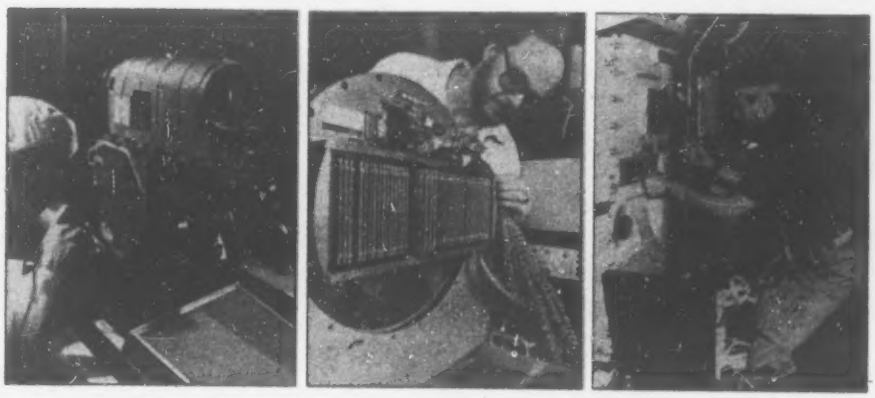
Collaboration

A major reason for the improved competitiveness of foreign producers is the consortium, an amalgam of manufacturers banded together in a common development, production and marketing effort. Such arrangements are particularly important in high risk, high cost, high technology developments -- commercial aircraft and engines, for example. The consortium approach permits companies — or countries — to share the risk, to pool their capital, technology and skilled personnel, and to broaden the market for the end product.

The laws under which foreign competitors operate do not restrict consortium programs. Japanese antitrust law did not prohibit firms from conducting collaborative R&D in targeted areas such as computers, robots, and aerospace. French antitrust law did not bar joint R&D projects in such areas as aerospace, telecommunications, microelectronics, energy, and conservation equipment. Similarly, West German firms have not been prevented from conducting joint R&D.

In recent years, due to changes in the world marketplace and dramatically rising development costs, U.S. aerospace manufacturers have increasingly entered into cooperative relationships with foreign companies in order to gain market share and reduce financial risk. Some types of developments could benefit from collaboration among two or more U.S. manufacturers, possibly with some foreign participation as well. This would provide the same basic advantages as a U.S. foreign partnership but would offer some bonuses: more U.S. jobs would be created; companies looking for collaborative arrangements would have a wider and possibly more beneficial selection of partners; and duplicative research among American companies, draining limited capital and personnel resources, would be reduced.

18 The Reagan Administration and the 98th Congress recognized that the inhibiting effects of antitrust restraints on U.S. companies had to be addressed, and the result was the enactment of the National Cooperative Research Act of 1984. This new law has three important thrusts: the courts are required to apply the "rule of reason" in making a determination as to whether a challenged joint R&D venture violates antitrust statutes, and to consider the venture's actual effects on competition; companies entering into such joint



R&D ventures, who disclose in advance to the government the participants and objectives of the venture, will be liable for actual damages only in the event of a finding of antitrust violation; and, the courts are granted the discretion to require a plaintiff to pay defendants' attorneys' fees if the plaintiff's claim or the conduct of the lawsuit is deemed to be "frivolous, unreasonable or without foundation."

While the enacted law is limited to the issue of R&D joint ventures, the Reagan Administration's original proposal also addressed the patent system. Proposed revisions for this purpose: prohibit supplying components of an invention in the United States for final assembly abroad; allow research team members to exchange unpublished data without endangering patent rights; simplify requirements for naming joint investors; and, authorize arbitration of patent interferences.

AIA supports these changes, believing it that it is in the national interest to remove unnecessary barriers, in order to permit high technology companies to be better able to compete in world markets through joint ventures and licensing projects.

Patent Policy

Patent rights are a stimulus to R&D in two principal ways: first, they encourage investment by providing for a limited time a protected market for inventions resulting from the R&D, and second, a patent stimulates competitive R&D by creating a necessity to "invent around" it, finding a different approach to product development than the one already patented, or improving upon the patented invention. Contractor retention of patent rights made in the course of government-sponsored R&D is a stimulus for the follow-on R&D essential to bringing the invention to market.

The U.S. Government operates under a variety of patent policies established by statute and policy promulgations and varying interpretations of the statutes and policies in implementing regulations. A move toward uniformity was taken by the 96th Congress in Public Law 96-517, under which small businesses, universities and domestic non-profit organizations may retain title to inventions made in the performance of an R&D government contract, grant or other funding arrangement. The administration moved in a direction long advocated by industry, with a policy statement extending the provisions of

PL 96-517 to all contractors by government agencies not statutorily precluded from doing so. One more step remains in the evolution of patent policy for allocating rights to inventions made under government-funded R&D: there is need for superseding legislation authorizing *all* federal agencies to allow contractors to retain title to inventions made in the course of government-funded R&D.

Technical Data

In many instances, commercialization of a patented invention depends largely upon — or is facilitated immeasurably by — the availability of the associated technical data. Although much technology developed under a government contract may not be patentable, nevertheless it has potential commercial value. Additionally, in the performance of government R&D, appropriate recognition and protection of a contractor's proprietary data is essential to preclude the loss of valuable property rights and to provide incentives for contractors to use such data in performing government contracts.

AIA has urged that the recognition and protection of proprietary data should be incorporated into a policy under which the contractor has title to technical data first generated under a federally-funded contract, the government's interest being protected by a license in the government for the use of the data for defined governmental purposes together with the right to authorize others to use the data for the same purposes. Such a policy should preclude the government from using its economic leverage to award contracts to expropriate a contractor's valuable data rights, by placing time limits on the government's recognition of proprietary markings or unilaterally setting a price on proprietary data.

20 Congress and the administration have moved forward a uniform technical data policy for use in procurement in statutes requiring uniform regulations allocating the rights in data developed exclusively with federal funds, exclusively at private expense and with mixed federal funds and private expense. The regulations are now under development.

Technical Manpower

If the aerospace industry is to expand its commercial export-related R&D, and simultaneously conduct the R&D necessary to the administration's planned improvement of the national defense posture, it is of prime importance that greater attention be focused on the U.S. research and technology base and on the availability, adequacy and utilization of scientific and engineering manpower. Specifically, there is need to strengthen the entire U.S. educational system — from secondary schools upward — as well as the interface between the aerospace industry and the American university system, which performs most of the nation's basic research and provides its engineers.

Various studies indicate substantial demand for scientists and engineers in the 1980s, particularly in aerospace. However, it seems clear that secondary schools generally are not offering adequate technical education and that the universities will not be able to graduate technical manpower in the numbers required; the number of enrollees electing technical majors, and staying with them, is limited. There is a related question as to whether technical graduates will have an up-to-date education, because schools are finding it increasingly difficult to obtain qualified teachers and modern training equipment. Additionally, there is a need — from industry's standpoint — for greater university focus on the practical problems associated with applied R&D.

Improved industry/university interface would benefit both partners in the relationship. For the universities, it would provide an alternative to uncertain federal funding and the problems frequently attendant upon government funding; it could broaden the experience of university personnel, compensate for loss of university talent to industry, and significantly improve university access to modern equipment. Additionally, successful

cooperative projects with industry would enhance a university's prestige and further its ability to attract quality faculty and students.

Improved interface with the academic community would allow industry to take greater advantage of university research talent, identify promising students and promote more industry-oriented research. Effective university/industry cooperation in basic research could provide cost savings for industry. In addition to industry-funded, university-conducted contractual effort, there are a number of different support mechanisms — from research consortia to grants to loans of equipment — that might profitably be expanded. However, supporting these programs is expensive. An AIA survey of 33 member companies showed it was $118 million in 1981.

In the interest of increasing the output and quality of graduates in the technical disciplines, the aerospace industry should develop a strategy for improving the industry/university relationship and identifying the ways in which industry can best support universities for maximum payback to industry. The government should encourage greater industry/university collaboration by providing incentives that would make the required additional outlays more palatable to industry. One measure that would be helpful is the inclusion of the total cost of all university research grants and industry-funded contract work when calculating the 25 percent tax credit. Another possible incentive measure is permitting allocation of industry IR&D funding for universities as a fully allowable cost.

Summary

The United States is facing an international trade challenge of unprecedented dimension. The best response to the challenge lies in a resurgent technological thrust designed to reestablish U.S. product superiority in the international marketplace. That goal is capable of accomplishment, but a first requisite is a comprehensive government policy on R&D that: *21*

- Accords a higher national priority to R&D;
- Encourages more effective cooperation among government, industry and the academic community;
- Maintains the strengths of competitive, decentralized decision-making by industry;
- Recognizes the long-term requirements for many R&D activities and encourages long-range R&D planning and stability of R&D funding.

Members

Abex Corporation
Aerojet-General Corporation
Aeronca, Inc.
Allied Corporation, Bendix Aerospace
Aluminum Company of America
Avco Corporation
The Boeing Company
Colt Industries
Chandler Evans Inc.
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ITT Defense Communications Division
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Rohr Industries, Inc.
The Singer Company
Sperry Corporation
Sundstrand Corporation
Sundstrand Advanced Technology Group
Teledyne CAE
Textron, Inc.
Bell Aerospace Textron
Bell Helicopter Textron
HR Textron Inc.
TRW Inc.
United Technologies Corporation
Western Gear Corporation
Westinghouse Electric Corporation
energy & Advanced Technology Group
Wyman-Gordon Company

STATEMENT OF STEPHEN BLOCK, VICE PRESIDENT, LAW AND GOVERNMENT AFFAIRS, CELANESE CHEMICAL, CO., INC., ACCOMPANIED BY RICHARD HINDS, COUNSEL, ON BEHALF OF THE SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS ASSOCIATION [SOCMA]

Mr. BLOCK. Thank you, Mr. Chairman. Good morning. My name is Stephen Block and I am a vice president for law and government affairs for Celanese Chemical Co. And I am a member of the board of governors for the Synthetic Organic Chemical Manufacturers Association, known as SOCMA.

With me is Richard Hinds, a partner in the Washington firm of Clearly, Gottleib, Stein & Hamilton, who is counsel to SOCMA.

I have already submitted a written statement for the record, and I would like to summarize it now.

Chairman GIBBONS. Yes, sir, go right ahead.

Mr. BLOCK. SOCMA is a nonprofit trade association representing over 100 organic chemical companies, the majority of which have annual organic chemical sales of under $50 million. The members of SOCMA produce more than 5,000 synthetic organic chemicals which are primarily intermediates and finished chemicals for industrial uses

I would briefly summarize our position on MTN negotiating authority and trade law reform and then address, specifically the issue of tariff negotiations in somewhat more detail.

SOCMA supports granting the administration an extension of its existing authority to negotiate multilateral trade subject to congressional approval under expedited review procedures.

However, unlike prior rounds the emphasis in this MTN should not be on tariff cutting, but rather on efforts to eliminate or reduce significant nontariff barriers to trade. SOCMA believes the new round should address a number of nontariff issues that are crucial to the long-range competitive position of the U.S. chemical industry.

These include restrictions on access to foreign markets by means of import licensing schemes; restrictions on foreign investment; and ineffective protection of intellectual property rights. Unless progress is made on these issues as well as on the reform of the GATT dispute resolution procedures, we will give up much more than we can gain in any tariff negotiations.

The trade reform bill discussion draft released by the Subcommittee on Trade does not deal with two issues that are of increasing significance to the chemical industry. One, the growing importance or low-priced imports from nonmarket communist countries. And two, the high cost of obtaining antidumping and countervailing duty relief. SOCMA urges the committee to revise the antidumping rules fcr state controlled economies to make them more predictable and meaningful. However, reforming our unfair trade laws in this and other ways is not meaningful if the cost of bringing the necessary proceeding is so high that smaller companies are effectively precluded from obtaining relief. We therefore, urge that the committee create a program to provide small firms with assistance so that they can obtain relief under the unfair trade laws. A specific proposal is contained in our written statement.

Now, let me turn to the specific issue of tariff negotiations. As we embark on this new round it is important to recognize that the domestic chemical industry is facing a major competitive challenge in the world markets. The U.S. favorable balance of trade in chemicals and allied products reached a peak of $12.16 billion in 1980.

It has declined an average of 9 percent per year since then to $7.63 billion in 1985. With respect to industrial organic chemicals, the trend has been even more marked. Imports of these chemicals have increased sharply from $3.5 billion in 1981, to $5.4 billion in 1985. Yet, during the last 2 years, the value of U.S. exports of industrial organic chemicals has remained stagnant at about $6.5 billion, a level only equal to that reached in 1981.

The net effect of these trade trends has been to reduce the favorable U.S. balance of trade in our industrial organic chemicals from approximately $3 billion in 1981, to only $1 billion last year.

SOCMA strongly believes that this new round of multilateral trade negotiations should focus on removing foreign and nontariff barriers and developing workable trade dispute resolution procedures and not simply be another tariff cutting exercise.

In particular, granting the President broad authority to proclaim tariff reductions could accelerate the declining U.S. balance of trade in chemicals and seriously injure benzenoid chemical producers. SOCMA therefore, urges that legislation granting the President tariff negotiating authority should include at least the following principles.

One, the President should be granted tariff negotiating authority with agreements being subject to fast-track congressional reviews, similar to the nontariff negotiating authority the President is granted by section 102 of the Trade Agreements Act.

Tariff agreements should not be approved however, unless foreign, nontariff restrictions which impair the value of tariff reductions have been addressed and substantially reduced.

Two, the President should be authorized to negotiate reductions of no more than 25 percent of the final Tokyo round tariff levels and the reductions in U.S. tariffs should be phased in at a rate of no more than 1 percentage point point per year.

For example, a 10-percent tariff should not be reduced more than 2.5 percent and that reduction should be phased in over 3 years.

Three, the bill should require that tariff negotiations achieve sectoral balance so that tariff reductions on chemicals are matched by foreign tariff concessions on chemicals of equal competitive value.

Four, the bill should establish a procedure to enable affected industries to identify and obtain exceptions from tariff cuts for import sensitive products.

Five, the bill should instruct our negotiators to negotiate on tariffs on the basis of request lists, rather than by imposing formula cuts across the board or automatically eliminating tariffs below certain levels.

I thank you very much and I would be happy to answer any questions.

[The prepared statement follows:]

TESTIMONY OF STEPHEN BLOCK

THE SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS ASSOCIATION

I. INTRODUCTION

I am Stephen Block, Vice President - Law and Government Affairs of Celanese Chemical Co. Inc. I am a member of the Board of Governors of the Synthetic Organic Chemical Manufacturers Association (SOCMA), a nonprofit trade association representing over 100 organic chemical companies, the majority of which have annual organic chemical sales under $50,000,000. The members of SOCMA produce more than 5,000 synthetic organic chemicals which are primarily intermediates and finished chemicals for industrial use. They include dyes, pigments, flavor and perfume materials, surface active reagents, fire retardants, electronic chemicals, resins, plasticizers, rubber-processing chemicals and medicinals. The products of the organic chemical industry are essential to many other industries, including agriculture, textiles, paper, steel automobiles, rubber, aerospace, defense and electronics. A current list of SOCMA's members is attached to my testimony.

II. SUMMARY

MTN Negotiating Authority

SOCMA supports granting the Administration an extension of its existing authority to negotiate multilateral trade agreements subject to Congressional approval under expedited review procedures. Unlike prior rounds, the emphasis in this MTN, should not be on tariff cutting but rather on efforts to eliminate or reduce significant non-tariff barriers to trade.

SOCMA believes the new round should address a number of non-tariff issues which are crucial to the long range competitive position of the U.S. chemical industry. These include restrictions on access to foreign markets by means of import licensing schemes, restrictions on foreign investment and ineffective protection of intellectual property rights. Unless progress is made on those issues, as well as on reform of GATT dispute resolution procedures, we will give up much more than we can gain in tariff negotiations. To ensure that this new round does focus on non-tariff issues the President should be granted limited tariff negotiating authority, not broad authority to proclaim reductions in U.S. tariffs. Furthermore, a workable procedure should be devised to permit interested parties to seek exemptions from tariff cuts for competitively disadvantaged articles.

Trade Law Reform

The Trade Reform Bill discussion draft released by the Subcommittee on Trade does not deal with two issues which are of increasing significance to the chemical industry: the growing importance of low priced imports from non-market Communist countries such as China and the high cost of obtaining anti-dumping and countervailing duty relief. SOCMA urges the Committee to revise the antidumping rules for state controlled economies to make them more predictable and meaningful. However, reforming our unfair trade laws in this and other ways is not meaningful if the cost of bringing the necessary pro-

ceeding is so high that smaller companies are effectively precluded from obtaining relief. We therefore urge that the Committee create a program to provide small firms with assistance so they can obtain relief under the unfair trade laws.

III. TARIFF NEGOTIATIONS ON CHEMICALS MUST REFLECT OUR CURRENT COMPETITIVE POSITION

Despite lofty aims all prior MTNs have primarily been tariff cutting rounds in which the United States made substantial tariff concessions on chemicals and other products in exchange for foreign tariff concessions. When analyzed on a chemical sector basis, the foreign concessions on chemicals were not equivalent to what the U.S. gave up. As the International Trade Commission reported to the Committee on Finance of the United States Senate in 1979 following the last MTN round, the tariff reductions on chemicals "on balance are viewed as slightly negative from the U.S. viewpoint." The Commission's report also predicted accurately that the companies producing cyclic (especially benzenoid) intermediates, synthetic dyes, and organic pigments (SIC 2865) would be likely to experience an increase in imports as a result of the MTN tariff reductions and the elimination of the American selling price system of Customs valuation. The report noted that domestic manufacturers of these products incur more costs than most foreign manufacturers for pollution abatement and for compliance with such measures as the Toxic Substances Control Act and therefore may have difficulty in meeting foreign competi-

tion. (MTN Studies: 6 Part 5: Industry/Agriculture Sector Analyses, Senate Committee on Finance Print 96/27, 99th Congress, 1st Session, (August 1979)).

As we embark on this new round it is important to recognize that the domestic chemical industry is facing a major competitive challenge in world markets. The U.S. favorable balance of trade in chemicals and allied products reached a peak of $12.16 billion in 1980. It has declined an average of 9% per year since then to $7.63 billion in 1985.

With respect to industrial organic chemicals, the trend has been even more marked. Imports of those chemicals have increased sharply, from $3.5 billion in 1981 to $5.4 billion in 1985. During the last two years the value of U.S. exports of industrial organic chemicals has remained stagnant at about $6.5 billion - a level only equal to that reached in 1981. The net effect of these trade trends has been to reduce the favorable U.S. balance of trade in industrial organic chemicals from approximately $3.0 billion in 1981 to only $1.0 billion last year. (Source: U.S. Department of Commerce, Schedule A, U.S. General Imports and Imports for Consumption and Schedule E, SITC Based Classification of Domestic and Foreign Commodities Exported from the United States. "Industrial organic chemicals" comprise product classificaton codes 51 and 53.)

As the above trade statistics demonstrate, our market is wide open while foreign markets are becoming increasingly

difficult to penetrate. We cannot continue to ignore non-tariff barriers such as import licensing schemes and foreign investment requirements which distort trade in chemicals and impair the value of foreign tariff concessions. Unless meaningful progress is made on eliminating such trade distorting practices, further tariff cuts on chemicals are not in our best interest.

We support the grant of modest tariff negotiating authority to the President subject to the condition that tariff agreements be reciprocal by sector. Specifically we recommend that the President be authorized to negotiate reductions of up to 25% of the final Tokyo Round tariff levels with reductions to be phased in at the rate of no more than one percentage point per year. Such agreements should be subject to Congressional review under § 201 of the Trade Agreements Act just like non-tariff agreements.

It is important to note that we are recommending the President be granted tariff negotiating authority rather than tariff cutting authority. We believe Congress should retain some meaningful review of tariff agreements. Our negotiators should be required to demonstrate to the Congress that the tariff deals they have negotiated are reciprocal and beneficial. In particular, our negotiators need to relate tariff reduction agreements to meaningful progress on removing non-tariff barriers that can impair or nullify the benefits of any foreign tariff concessions.

We also believe it important that any bill authorizing tariff negotiations contain a procedure under which a domestic industry can obtain exceptions from the maximum tariff cuts for certain products. This is particularly important in the benzenoid chemical sector. The benzenoid chemicals formerly subject to the American selling price system of Customs valuation have historically been more sensitive to import competition than other classes of chemicals. Most benzenoid chemicals (e.g., cyclic intermediates, dyes) are produced in relatively small batches requiring a higher proportion of labor input than chemicals produced in continuous process plants. In addition to having substantially higher labor costs than their foreign competitors, U.S. companies face higher expenditures for compliance with environmental laws and worker protection.

The combination of higher costs and the overvalued dollar has had a significant adverse impact on exports of these products and produced a flood of imports, facilitated by substantial tariff reductions and the elimination of the American selling price system agreed upon at the last MTN. Because of these factors, the domestic benzenoid industry has not been able to achieve the economies of scale of its foreign competitors and operates at a competitive disadvantage. It is therefore important to establish a procedure for exempting certain benzenoid products from substantial tariff cuts.

We recommend that the President be required as a prenegotiation step to request the International Trade Commission

to determine if the domestic industry producing certain articles is or will be at a competitive disadvantage with respect to imported articles if the maximum authorized cut in tariffs is made. If the ITC finds in the affirmative those articles should be excepted from any tariff cuts or at least made subject to a smaller maximum cut, specified by the ITC. The criteria the ITC should use to determine the existence of a competitively disadvantaged product should be explicitly set forth in the authorizing legislation and should establish a more liberal standard than the ITC has used in the past to determine whether articles were "import sensitive".

Finally, we recommend that tariff negotiations proceed on the basis of request lists in which each country lists the foreign tariffs it desires to have reduced rather than by proposing to reduce all tariffs, across the board, by some arbitrary formula amount or eliminating all tariffs below certain levels. After review of the request lists that the U.S. receives from our trading partners, and following the exceptions exercise mentioned above, the U.S. would table its responding offer with the objective of seeking a sectorially balanced agreement. Such a negotiating process is more likely to produce useful results for the U.S. chemical industry than the procedures followed in the past two MTN rounds.

Summary of Recommendations on
MTN Tariff Negotiating Authority

SOCMA strongly believes that this new round of Multilateral Trade Negotiations should focus on removing foreign non-tariff barriers and developing workable trade dispute resolution procedures and not simply be another tariff cutting exercise. In particular, granting the President broad authority to proclaim tariff reductions could accelerate the declining U.S. balance of trade in chemicals and seriously injure benzenoid chemical producers. SOCMA therefore urges that legislation granting the President tariff negotiating authority should include the following principles:

1. The President should be granted tariff negotiating authority, with agreements being subject to "fast track" Congressional review, similar to the non-tariff negotiating authority the President is granted by § 102 of the Trade Agreements Act. Tariff agreements should not be approved unless foreign non-tariff restrictions which impair the value of tariff reductions have been addressed and substantially reduced.

2. The President should be authorized to negotiate reductions of no more than 25% of the final Tokyo Round tariff levels and the reductions in U.S. tar-

iffs should be phased in at a rate of no more than 1% ad valorem per year. For example, a 10% tariff should not be reduced more than 2.5% and that reduction should be phased in over three years. (The President would be free to negotiate greater reductions or even the elimination of U.S. tariffs but such agreements would be subject to normal Congressional review and approval processes.)

3. The bill should require that tariff negotiations achieve sectoral balance so that tariff reductions on chemicals are matched by foreign tariff concessions on chemicals of equal competitive value.

4. The bill should establish a procedure to enable affected industries to identify and obtain exceptions from tariff cuts for import sensitive products.

5. The bill should instruct our negotiators to negotiate on tariffs on the basis of request lists, rather than by imposing formula cuts across the board, or automatically eliminating tariffs below certain levels.

IV. TRADE REFORM

A. Need for Revision of Antidumping Rules For State-Controlled Economies ("SCE")

The present means of calculating the antidumping duties applicable to products dumped on the U.S. market by Communist countries have proven to be unworkable, because of the extreme uncertainty created under the current laws. The practice of calculating antidumping duties by reference to a "surrogate country" should be changed so that petitioners and importers can accurately predict the outcome of an antidumping proceeding involving a SCE.

The uncertainty arises from the difficulty in ascertaining the appropriate "home market" price of goods sold by SCEs. To obtain relief under the antidumping laws, it is necessary to show that the allegedly dumped merchandise is being sold in the United States market for less than in the "home market." If the prices charged for the merchandise in the home market are controlled by the government, those prices cannot be assumed to represent the "fair value" of the merchandise, and cannot be compared with the price charged for such merchandise in the United States to determine whether the merchandise is being dumped on the U.S. market. Therefore, under current law, the Commerce Department is directed to determine the foreign market value of the allegedly dumped merchandise by referring to the price at which such or similar merchandise produced by another foreign country that has a non-state-controlled economy (a "surrogate country") is sold.

In practice, the use of the "surrogate country" approach has proven unacceptable. Neither the domestic industry nor the foreign exporter can be certain what "surrogate country," and thus what prices, the Commerce Department will use to determine whether products of a Communist country are being dumped on the U.S. market. Because the domestic industry cannot determine the extent of relief which it could obtain, the current rules discourage the domestic industry from filing petitions for relief. Furthermore, in the absence of any clear benchmarks, an SCE country cannot determine with any precision what price levels will avoid dumping charges. There is therefore little inducement to raise prices above the levels selected to meet export sales targets. These problems have become more significant in recent years as SCE's such as China increase their exports to the United States.

SOCMA believes that the antidumping rules must be amended to replace the "surrogate country" provisions with a more predictable and administratively practicable means of determining foreign market value in SCE cases.

B. Assistance for Small Firms to Obtain Relief Under the Trade Laws

The procedure which must be followed in order to obtain relief under the trade laws from unfair foreign trade practices (i.e., dumping and subsidization by foreign governments) is complex and costly and prevents many companies from seeking relief. Generally, two separate and lengthy proceed-

ings, one before the International Trade Administration and one before the International Trade Commission, must be successfully completed, followed by possible court appeals. The costs involved in these proceedings fall hardest on small businesses and firms, who in many cases are the ones most severely injured by the unfair trade practices. In order to insure that these companies have fair access to the statutory procedues to halt unfair trade practices, it is necessary for small firms to receive assistance to enable them to bring valid claims to the attention of the U.S. government.

A small step in that direction was made by Congress in the Trade and Tariff Act of 1984, when it directed the International Trade Commission ("ITC") to provide small businesses with technical assistance to enable them to file petitions and applications for relief under the trade laws. However, the assistance offered to small businesses is currently limited to informal technical and legal advice relating only to the preparation and filing of petitions. No assistance is available after the petition is filed and no financial assis- tance is provided.

The steps in the process of obtaining relief from unfair trade practice are long and can be very expensive, prohibitively so to many small businesses. Recognizing the limitations of the current law, Senator Dodd has introduced legislation (S. 2063) which would establish the Small Business Trade Remedy Trust Fund to partially defray the reasonable ex-

penses, including legal fees and the costs of data collection, incurred by small businesses in connection with a nonfrivolous antidumping or countervailing duty proceeding. The monies in the Trust Fund would be obtained from the countervailing and antidumping duties which currently go into the general fund of the Treasury. Under Senator Dodd's bill, an eligible small business would receive reimbursement from the Trust Fund for 90% of the first $50,000 of its reasonable expenses and for 50% of its reasonable expenses over $50,000.

SOCMA believes that small businesses should not be barred for financial reasons from seeking remedies for unfair trade practices and accordingly strongly supports inclusion in the House trade reform bill of an assistance program comparable to that contain in S. 2063.

April 1, 1986

SOCMA MEMBERSHIP

ACTIVE MEMBERS

ACETO INDUSTRIAL CHEMICAL CORPORATION
AMERICAN CYANAMID COMPANY
AMERICAN HOECHST CORPORATION
AMOCO CHEMICALS CORPORATION
BASF CORPORATION
BERNCOLORS-POUGHKEEPSIE, INC.
BIDDLE SAWYER CORPORATION
BOFORS NOBEL, INC.
BUFFALO COLOR CORPORATION
CAREY INDUSTRIES, INC.
CELANESE CORPORATION
CHATTEM, INC.
CHEMDESIGN CORPORATION
CHEMICAL EXCHANGE INDUSTRIES, INC.
CHEMRON CORPORATION
CHEMTAN COMPANY, INC.
CROWN METRO, INC.
D & O CHEMICALS, INC.
DAY-GLO COLOR CORPORATION
DEGUSSA CORPORATION
DIXIE CHEMICAL COMPANY
DOW CHEMICAL U.S.A.
E.I. DU PONT DE NEMOURS & COMPANY, INC.
DYE SPECIALTIES INC.
ESCO - EAST SHORE CHEMICAL COMPANY, INC.
EM INDUSTRIES, INC.
EVAN CHEMETICS
EXXON CHEMICAL COMPANY
FMC CORPORATION
FAIRMOUNT CHEMICAL COMPANY, INC.
FIKE CHEMICALS, INC.
GAF CORPORATION
H & S CHEMICAL COMPANY, INC.
HARDWICKE CHEMICAL COMPANY (application pending for April Board Meeting)
HEXCEL CORPORATION
HILTON-DAVIS CHEMICAL COMPANY, THE (GROUP OF STERLING DRUG, INC.)
HUMPHREY CHEMICAL COMPANY, THE
ICI AMERICAS INC.
JARCHEM INDUSTRIES, INC.
KOHNSTAMM, H., & COMPANY, INC.
LOCTITE CORPORATION
LONZA, INC.
MOBAY CORPORATION
MONSANTO COMPANY
MORLEX CHEMICAL COMPANY, INC. (application pending for April Board Meeting)

MORTON THIOKOL, INC., MORTON CHEMICAL DIVISION
MUSKEGON CHEMICAL COMPANY
NAPP CHEMICALS INC.
NATIONAL STARCH & CHEMICAL CORPORATION
NEWELL SPECIALTY CHEMICALS, INC.
NORAMCO, INC./ FIRST STATE CHEMICAL COMPANY
OCCIDENTAL CHEMICAL CORPORATION
OLIN CORPORATION
ORSYNEX, INC. (A SUBSIDIARY OF ESSEX CHEMICAL CORPORATION)
C.H. PATRICK & COMPANY, INC.
PENNWALT CORPORATION
PFISTER CHEMICAL INC.
POLAROID CORPORATION
PRODUCTS RESEARCH & CHEMICAL CORPORATION
R.S.A CORPORATION
REILLY TAR & CHEMICAL CORPORATION
SCM CORPORATION (ORGANIC CHEMICALS DIVISION)
SALSBURY LABORATORIES
SANDOZ CHEMICALS CORPORATION
SHEREX CHEMICAL COMPANY, INC.
SOLUOL CHEMICAL COMPANY, INC.
STANDARD CHLORINE CHEMICAL COMPANY, INC.
STAUFFER CHEMICAL COMPANY
STERLING ORGANICS (A DIVISION OF STERLING CHEMICAL GROUP)
STREM CHEMICALS, INC.
SUN CHEMICAL CORPORATION
SYBRON CHEMICALS INC.
SYNALLOY CORPORATION, (BLACKMAN UHLER CHEMICAL DIVISION)
UNION CARBIDE CORPORATION
UPJOHN COMPANY, THE (FINE CHEMICAL DIVISION)
WHITE CHEMICAL CORPORATION
WITC CORPORATION
WYCKOFF CHEMICAL COMPANY, INC.

ASSOCIATE MEMBERS

ATLANTA CHEMICAL COMPANY, INC.
BCM ENGINEERS INC.
BROWN & CALDWELL CONSULTING ENGINEERS
CP CHEMICALS, INC.
CHEMIE LINZ, US, INC.
CHEMISPHERE CORPORATION
CHEMSULTANTS INTERNATIONAL
COLOR CHEM INTERNATIONAL CORPORATION
EM DIAGNOSTIC SYSTEMS, INC.
ENGELHARD CORPORATION
ERT, A RESOURCE ENGINEERING COMPANY
FANWOOD CHEMICAL, INC.

R.W. GREEFF & COMPANY, INC.
HALCON CATALYST INDUSTRIES
C. ITOH AND COMPANY (AMERICA) INC., SPECIALTY CHEMICALS DIVISION (application pending for April Board Meeting)
E.B. KNIGHT, INC.
MERCANTILE DEVELOPMENT, INC.
MITSUBISHI INTERNATIONAL CORPORATION, FINE CHEMICALS DIVISION
MITSUI & COMPANY, (U.S.A.), INC.
MONTEDISON USA, INC.
NACHEM, INC.
ORLEX CHEMICALS CORPORATION
PYLAM PRODUCTS COMPANY, INC.
R-CHEM, INC.
RADIAN CORPORATION
SMC MARTIN INC. (application pending for April Board Meeting)
SNPE, INC.
TRC ENVIRONMENTAL CONSULTANTS, INC.
TRIPLE CROWN AMERICA, INC.
ROY F. WESTON, INC.
WILSON DYE & CHEMICAL DISTRIBUTORS, INC.

Chairman GIBBONS. Thank you and now Mr. Katz?

STATEMENT OF SHERMAN E. KATZ, COUNSEL, NATIONAL FOREIGN TRADE COUNCIL

Mr. KATZ. Thank you, Mr. Chairman. Good morning.

I am a partner of the law firm of Coudert Brothers and I appear this morning on behalf of the National Foreign Trade Council.

I am delighted to have the opportunity to present the views of this association of 550 U.S. companies which account for more than two-thirds of U.S. exports. And the council believes that the United States should take the lead in promoting a more open international trade system. We believe that our economic policies should enhance the competitiveness of U.S. industries and should aggressively seek to open foreign markets, to fair competition from U.S. goods and services. And we believe that such a policy will best serve U.S. interests.

An essential ingredient, we believe, of expanded international trade is an improved system of international trading rules. The present rules, embodied in the GATT, must be expanded and strengthened to deal with new economic realities. Therefore, the council supports an early start on a new round of multilateral trade negotiations under the GATT

Let me, if I may, describe five objectives, which we believe, ought to be pursued at the next GATT round.

First, we think the GATT ought to complete the work which is already under way. In particular, negotiations on an agreement on a counterfeit goods code is essential. There ought to be economic deterrents to the counterfeiting of goods, such as penalties and, if necessary, the seizure of goods.

There ought to be an effective enforcement system with respect to the counterfeiting of goods and there ought to be dispute settlement procedures within the GATT for dealing with this growing problem.

Also, regarding completion of GATT work under way, there must be completion of negotiation of a safeguards code. This is the only way to bring under GATT discipline the mushrooming VRA's and OMA's which now affect about twice as much world trade as they did 10 years ago. These so-called safeguards often overlook the fact that they are supposed to be temporary, phased out programs to allow industry to adjust to new international competitive conditions.

We note that MFN safeguards, that is, safeguards which are applicable to all nations are preferrable. On the other hand, in some cases, so-called selective safeguards which are applicable only to certain countries may be unavoidable. Therefore, the council endorses exploration of the two track approach to the safeguards problem which was considered at the 1982 GATT Ministerial meeting. That is an approach that would allow both MFN and so-called selective safeguards provided that all safeguards are temporary in time and are linked specifically to a causation of injury by imports.

Let us turn then to a second objective for the next GATT round and this is the reform of existing GATT codes. First let me address briefly, reform of the subsidies code.

The council believes that the subsidies code should have broader coverage, especially for subsidies aimed at export promotion. And we believe that there must be better methodology for measuring subsidy practices.

We think that agricultural subsidies should be treated more like manufacturing subsidies And finally, we think that there must be some GATT review of the types and effects of targeting practices with the view to some international agreement on limits to such practices and compensation for targeting practices which distort international trade.

Another code that must be reformed is the Government Procurement Code. Improved access to the enormous amount of procurement conducted by foreign governments, offers a major opportunity to U.S. high-technology industries and service industries.

Therefore, in order to hasten the slow implementation of this agreement we must find ways to increase its transparency and to increase its enforcement. We also think that the coverage of this code must be broadened, to include telecommunications, transportation and power generation.

A third objective at the next GATT round is to extend GATT to new areas, in particular, services and an intellectual property code. Regarding services, we endorse the idea that there should be a code of general principles on services trade. Such a code would include elements such as the right of market access and the right to national treatment.

Second, regarding services, there should be sectoral agreements on individual service industries, and third, we think that GATT codes, such as the subsidies code and the antidumping code need to be extended, where appropriate to the service area.

Second, in addition to a counterfeiting code, we believe that there must be an intellectual property code. In this regard, patents, trademarks, copyrights, and trade secrets are the fruits of innovation which is the foundation of our commercial system.

This will be increasingly true as high-technology trade takes center stage in world trade.

Therefore, we believe that intellectual property rights must become part of the laws and rules by which trade and investment operate.

Turning then, to a fourth goal for the next GATT round. We believe that the GATT system must be made more effective and this means improving the GATT dispute settlement mechanism, both as to its speed of operation and compliance with its operation.

Here are three specific ways that the dispute settlement mechanism can be improved. First, the council believes that a pool of professional dispute panelists must be created who are paid by the GATT. We think that such specialists would be an improvement over the so-called neutral government representatives who now participate.

Second, we think that these panel recommendations must be automatically accepted by the GATT council unless a majority of those countries, who are not involved in the dispute, vote against that recommendation.

Third, we think that there must be mandatory deadlines for compliance with these panel recommendations. And if there is not such

compliance the aggrieved parties would automatically have the right to retaliate.

Finally, regarding goals for the GATT, with respect to the future of the GATT, we think that there is a need for a forum for the intensive policy discussions which are essential to the healthy evolution of a trading system.

We are talking about a ministerial forum of some kind which would enhance political overwight. We mean to say that the GATT ought to be able to operate, not unlike the IMF Interim Committee, or the OECD country review process. There are so many increasingly complex questions which raise such hotly contested and often domestic policy issues that the GATT can and should become a forum for discussion and review of those questions.

Second, having discussed some objectives for the next GATT round, let me turn to congressional negotiating authority.

In view of the contentious issues, such as subsidies, safeguards and dispute settlements, the council supports congressional provision of broad and flexible authority to tackle the difficult and novel problems which confront us.

The council believes that section 172 of the discussion draft is a strong step in the right direction. Let me make six specific comments.

First, the council supports the list of objectives given in section 172.

Second, regarding the preference stated for multilateral agreements over regional or bilateral agreements, the council supports that view with the following caveat. Regional or bilateral agreements could undermine the multilateral system if they are pursued at the expense of other countries.

Therefore, we believe that all such agreements should be open to others who are willing to accept the same commitments given by the two countries or regional countries to such agreement.

And third, we strongly endorse the extension of tariff reduction authority and the fast-track approval for nontariff agreements.

Fourth, we strongly oppose any preconditions, constraints or requirements which would be inimical to a liberalizing and GATT strengthening negotiation.

Fifth, as noted, many of the issues which will come before the next GATT will be complex and discussion of them will be protracted and therefore, we think that the United States should seek an understanding that self-contained agreements can be brought back to capitals, can be approved and can be implemented prior to completion of the final package.

I might note that one purpose which GATT negotiations have served in the past is to keep momentum going toward free trade and away from protectionism. If we are going to have a very long round of negotiations, it is important that we feed the system with some hope and encouragement and new rules which can be taken from the next GATT round before we wait for a 5- or 10-year round to be finished.

Finally, we support the notion in section 172 that there be full consultation by this administration with Congress and with the private sector. We think that only through such consultation, will it be possible to forge an effective trade negotiating posture which

will enable us to lead our partners toward the strengthened trade regime which will produce maximum benefits for all.

Thank you very much. I will be happy to answer your questions.

[The prepared statement follows:]

TESTIMONY OF
SHERMAN E. KATZ
PARTNER, COUDERT BROTHERS
ON BEHALF OF THE
NATIONAL FOREIGN TRADE COUNCIL
BEFORE THE
HOUSE COMMITTEE ON WAYS & MEANS
SUBCOMMITTEE ON TRADE
APRIL 17, 1986

The National Foreign Trade Council, an association of over 550 U.S. companies which accounts for the major share of U.S. exports, welcomes this opportunity to present its views on the next round of multilateral trade negotiations and the provision of Congressional authority for such negotiations.

The NFTC believes that the U.S. must take the lead in promoting a more open international trading system. An economic policy which enhances the competitiveness of U.S. industry and aggressively opens up foreign markets to fair competition from U.S. goods and services will best serve U.S. interests.

One essential ingredient for expansion of world trade is an improved system of international trading rules. The present rules, embodied in the General Agreement on Tariffs & Trade ("GATT"), must be expanded and strengthened to address new economic realities.

The Council supports early commencement of a new round of trade negotiations under the auspices of the GATT. The GATT's tariff cuts and system of rules governing the behavior of trading nations have encouraged phenomenal growth in world trade since the GATT entered into force in 1948. Since the Tokyo Round of GATT negotiations was completed in 1979, the need for bringing trade in services, trade-related investments, and intellectual property into the GATT has become apparent.

Our negotiators should press throughout new negotiations for greater openness and transparency in the trading system as well as for a reduction in the restrictive trade practices that have accumulated. These restrictive practices are no longer confined to tariffs, but more frequently they are sector-specific, non-tariff barriers and restrictions.

Quantitative restrictions, voluntary export restraints and orderly marketing arrangements have expanded in scope, in the range of products and countries affected, and in persistence. They now affect as much as one-third to one-half of world trade, a near doubling since the early 1970's.

The new trade environment has also produced a proliferation of domestic policies (subsidies, regulations, tax expenditures, transfer payments) which in fact have significant trade flow effects but are now considered domestic terrain and therefore are immune to GATT rules and procedures.

I. OBJECTIVES FOR THE NEXT GATT ROUND

It is evident, from the extent and nature of the erosion of the trading system, that significant institutional strengthening and reformation of the GATT will be required in the new round. Specifically, we recommend that U.S. negotiators pursue the following goals:

1) Completion of GATT Work Already Under Way -- NFTC believes it is important to reach agreement on a counterfeit goods code and on a safeguards code governing restrictive measures taken by countries to protect their import-threatened industries.

In particular, the counterfeiting code should include economic deterrents, effective enforcement and dispute settlement procedures within the GATT covering commercial counterfeiting. The growth of international traffic in counterfeit goods is a graphic example of how inadequate intellectual property protection impacts international trade.

Completion of the negotiation of the safeguards code is essential to bring under GATT discipline the growing number of so-called voluntary restraints and orderly marketing arrangements set up outside the provisions of the GATT escape clause. It has also been overlooked in many cases that safeguards are to be invoked only to permit and encourage adjustment to international competition. The result of this accumulation of export restraints and safeguards, if not curtailed by an agreed set of rules, could be to jeopardize the maintenance of an open multilateral trading system.

While the NFTC believes that MFN safeguards, applied to all nations on an equal basis are preferable, selective safeguards applied by some countries to exports from certain others may be unavoidable. Therefore, the NFTC endorses continued exploration in negotiations of the two-track

approach tabled at the 1982 GATT Ministerial meeting. This approach would permit the use of both MFN and consensual selective safeguards, but only in the event all safeguards are temporary, invoked only when imports are the cause of serious injury, and phased out over time.

2) Reform of Existing GATT Codes -- The subsidies code needs better definition and broader coverage to reach practices which provide particularly injurious, notably agricultural subsidies, targeting and mixed credits. The Government Procurement Code should be extended to services and leasing and should cover more purchasing entities.

GATT discipline has been only moderately effective in addressing industrial export subsidies, but ineffective in limiting domestic subsidies, and virtually irrelevant in the case of agricultural subsidies.

The U.S. should seek (1) broader coverage for the subsidies code, particularly for those subsidies primarily aimed at export promotion; (2) better methodology for measuring subsidy practices; (3) GATT review of the types and effects of targeting practices with a view toward reaching international agreement on limits to, or appropriate compensation for, targeting practices which are trade-distorting; and (4) treatment of agricultural subsidies more similar to those in manufacturing.

Regarding the government procurement code, improved access to foreign government procurement markets can produce a potentially large volume of U.S. sales opportunities, especially in the high technology and service sectors where U.S. industries are highly competitive. Implementation of the procurement code has been far slower than expected. There has been considerable non-observance of the code due somewhat to a lack of understanding, bureaucratic inertia and deliberate design.

The NFTC strongly recommends that agreements be sought in the new round that facilitate greater transparency, better enforcement, and increased coverage of the procurement code to include telecommunications, transportation and power generation.

3) Extension of the GATT to New areas of Activity -- NFTC recommends a code of general principles governing services trade as well as selected sectoral agreements covering individual service industries and an extension of existing GATT codes, as appropriate, to services.

In addition to a counterfeiting code, intellectual property rights should be reinforced by work leading to

a code covering intellectual property issues. Patents, trademarks, copyrights and trade secrets have become increasingly important to U.S. industry and trade in recent years. Innovation is the very foundation of our industrial and commercial system; it must be nourished and encouraged if trade is to prosper. As research-based high technology sectors become more and more prominent in world trade, it will be necessary that intellectual property rights -- the basis for continued progress in the development of such sectors -- become part of the set of laws and rules by which trade and investment operate, including GATT rules as appropriate.

A work program should begin also on trade-related investment issues, particularly performance requirements.

4) Making the GATT System More Effective -- Greater respect for, and adherence to GATT rules is essential. The time has come to make GATT dispute settlement more expeditious and to improve compliance with GATT decisions. Panels should be made more independent and expert by the creation of a pool of professional panelists who would be compensated for their efforts by the GATT. A panel recommendation should be automatically accepted by the Council unless a majority of the Council members not directly involved in the outcome vote to reject the panel's report. Finally, once the Council determines that a violation has occurred, there should be a mandatory deadline for compliance, failing which retaliation by the aggrieved signatory or signatories would be automatically authorized.

While these reforms are fundamental and it will be difficult to achieve consensus, the availability of an effective dispute resolution mechanism is essential, both to obtain for the U.S. and other signatories the benefits of the codes and the General Agreement, and to assure support from the the U.S. business community for enactment of legislation to implement the results of the MTN round.

5) Future of GATT -- New trade negotiations should seek agreement on a permanent GATT process of policy review. This may mean a regular Ministerial forum to enhance political oversight. Some have suggested a surveillance mechanism not unlike the country review process of the OECD. Another possibility is a standing Ministerial committee like the IMF's Interim Committee. The present GATT provides no focus, at either a Ministerial or official level, for the kind of intensive policy discussion which is essential to the healthy evolution of the trading system in an increasingly interdependent and changing world.

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Attention should also be given in the GATT to identification of areas to which GATT rulemaking might be extended. This forward-looking orientation might help anticipate future trade trends and help prevent GATT from falling behind important new forms of government intervention in trade policy which require an agreed set of rules.

II. CONGRESSIONAL NEGOTIATING AUTHORITY

The agenda of the upcoming GATT round, more than any other previous GATT round, is heavily weighted by contentious systemic issues. Some come under the general rubric of institutional reforms such as improved dispute settlement procedures and Ministerial oversight of trade policy. Others, such as the safeguard issue and improved disciplines in the subsidy area for both agriculture and industry, emphasize that the blurring boundary between domestic and international policy cannot readily be handled in a legislative fashion.

In this context, the NFTC believes that it is particularly essential that Congress provide our negotiators with broad authority and flexibility to tackle these difficult and novel international trade problems. Such a mandate from Congress will send a powerful message to our trading partners that the Government and the people of the U.S. understand that expanded market opportunities for all is the keynote of our approach to trade problems rather than diminished market access through import restraints.

To this end, NFTC believes that Section 172 of the House Ways & Means Committee "discussion draft" is a strong step in the right direction. The enumeration of principal trade negotiating objectives is one which we support. The stated preference for multilateral trade agreements to regional or bilateral agreements is supported by the NFTC with the following caveat: regional or bilateral agreements could undermine the multilateral system if they are pursued at the expense of other countries. We believe that all such agreements entered into should be open to other countries willing to accept the same commitment.

We heartily endorse the continuation of tariff reduction authority as well as the extension through the beginning of 1991 of authority for non-tariff barrier agreements and the related system for fast track approval by Congress.

We oppose any legislation which imposes constraints, preconditions or requirements inimical to the conclusion of liberalizing and GATT-strengthening negotiations.

Because many government programs affecting trade such as domestic supports, government ownership, and industrial policy are likely to be taken up for the first time by GATT, and because deliberations on these complex issues may be protracted, it is quite possible the next GATT round may last between 5 to 10 years, much longer than any previous round. The U.S. should seek an understanding that self-contained agreements emerging from the negotiations can be brought back to capitals for approval and implementation without waiting for a final package. This provision should have at least a 5-year duration, with the possibility of continuing negotiations after the formal conclusion of the round in some particularly difficult areas, such as specific agreements or commitments under a services umbrella.

Finally, we believe that multilateral trade negotiating authority should provide for full consultation with Congress and with the private sector. Only through steady and close cooperation among our trade negotiators, legislators and business representatiaves can we hope to forge the effective trade negotating posture which will enable us to lead our partners toward the strengthened trade regime which will produce the maximum benefits for all.

* * * * *

Chairman GIBBONS. Thank you, Mr. Katz.

An interesting idea that you have there about making our bilateral arrangements open to all of those who will accept the same discipline. I do not know why that had not occurred to me before this. But I think that it has got possibilities.

Mr. KATZ. Thank you, sir.

Chairman GIBBONS. As a for instance, we can take, say, the hoped-for United States/Canadian agreement and anybody who would agree to the same thing, could join our agreement, is that what you mean, something like that?

Mr. KATZ. That is exactly right. There will be various undertakings on both sides, and we would require all additional countries who wanted to be party to such an agreement, to make the same commitments. And if they were prepared to do that, they would and should be welcome to such an arrangement.

Chairman GIBBONS. Let me ask you, maybe I ought to be able to answer this one myself.

Is there any language in the United States/Israeli agreement that would allow this or is that one so unique that it perhaps would not be a good model?

I cannot offhand think of any reason why people could not, if they would agree to that one, could not move in on that, if we—this may be a quick way of negotiating things.

Mr. KATZ. I agree with you. I do not think that there is any language in the agreement which precludes this possibility. On the other hand, I am not aware of any language in the agreement which specifically invites such a possibility.

I would be pleased to review the agreement and address that question and provide followup information to the Chair.

Mr. SCHULZE. Would the gentleman yield on that point?

Chairman GIBBONS. Sure, yes.

Mr. SCHULZE. I think that what you say has some merit, but it becomes difficult in practice, because where we have difficulties with other nations in their trading practices, and we define those and phase them out over a 3- or 5- or 10-year period, it is very rare that our relationship would have those specific problems. So, I think that it sounds good, but practically it would be very difficult unless you had an addendum. But it seems to me that that is where we are going with Canada, we will be able to use that as a basis for agreements with other nations. But I share the chairman's interest in your proposal.

Mr. KATZ. May I comment briefly, Mr. Chairman?

Chairman GIBBONS. Certainly.

Mr. KATZ. I fully take the point and it is a good one that there are difficulties in every bilateral relationship and it may be a problem to quantify those difficulties and find equivalents in other relationships. But I do not know that that should necessarily be a bar that prevents us from considering the possibility that there may be ways to find formulas which accomplish the purpose.

I think that as we pursue these bilateral regional arrangements, if we do that, we are really working toward the end goal of maximizing trade and if there are ways to bring third countries along that would help us accomplish that goal, we would be helping ourselves and helping those other countries.

Chairman GIBBONS. I am looking and thinking about the Caribbean. We have made the Caribbean Basin rather attractive by our unilateral position but we still have not gone far enough. We have excluded a lot of things that they could rely upon or try to build business upon and perhaps there are some countries in the Caribbean, who are far enough advanced that they could enter into a free trade area with us, not just the kind of unilateral free trade area that we now have with them.

You have hit an interesting theme there that I will have to explore a little more.

Mr. KATZ. I think that when you take a geographic area like that, if I may comment, you find that there are many countries who would have very similar kinds of concerns in their bilateral relationship. And therefore, it might be not particularly difficult to have an agreement open to many of those countries precisely because the kinds of concessions sought on both sides would be quite similar in each of those bilateral relationships.

Chairman GIBBONS. Well, I want to do more in the Caribbean than we have been able to do because I think that it is so unique and so close to us and such a poor area. I am kind of really fishing around for ideas as to what we can do that would help both of us in this area.

Ms. Sherbeck, when Ambassador Yuetter testified before this subcommittee in February, he told us that there would be consultations with the airbus governments in Europe to clarify the GATT civil air agreement. In the industry's opinion, is the aircraft agreement working appropriately and how and when can it be improved?

You touched some of this but I would like to go back just specifically on those areas.

Ms. SHERBECK. Let me ask Ms. Campanella to address that question if you do not mind?

Chairman GIBBONS. All right, fine. Ms. Campanella?

Ms. CAMPANELLA. Mr. Chairman, the aerospace industry is very lucky to have a sectoral agreement that addresses some of the trade problems, particular and peculiar to the industry. It is both a tariff and a nontariff barrier agreement and on the the tariff side, it is working beautifully. It has eliminated, as Ms. Sherbeck said, 95 percent of civil aircraft engines and parts are traded duty free at this point.

Chairman GIBBONS. Where is the other 5 percent?

Ms. CAMPANELLA. It is being looked at constantly by the GATT committee on aircraft in Geneva. It is primarily subcomponents. And most of the parts though, already do receive duty free treatment.

Ms. SHERBECK. In many cases, the ones that are not duty free are used in other kinds of equipment in addition to aircraft so that it is a problem of definition in many cases.

Ms. CAMPANELLA. Ball bearings, for example, are not traded duty free. The tariff cuts have gone a long way in liberalizing trade in the sector. Some in our industry though, would argue that the tariff cuts may have gone too far for reasons cited in the testimony. Namely that the tariff cuts are provided on an MFN basis, which means that aircraft trading nations can or they find a duty free

market for their goods in our market, whereas, our products face sometimes up to a 50-percent tariff in their market.

So that is one problem perhaps on the tariff side of the agreement. On the nontariff side of the agreement, however, there are some more serious problems. Frankly, I do not think that the U.S. negotiators nor the industry have garnered from the agreement quite the benefit that was envisaged or hoped for. At a minimum, and perhaps at best, the agreement has worked as a deterrent to unfair trade practices, trade distorting practices. It certainly has not eliminated them. Unfortunately as was stated in the testimony, the nontariff barriers are largely weak and unenforceable. And this problem is compounded by the fact that most governments, with the exception of ours, lack the political will needed to enforce the nontariff barrier provisions, which are, frankly, ambiguous and loosely worded.

And as recently as April 1985, by way of example, the Europeans stated publicly in the forum of the GATT Committee on Trade and Civil Aircraft in Geneva, that they view the aircraft agreement as a tariff agreement. And notwithstanding the fact that it is primarily or that its provisions are overwhelmingly nontariff, so that indicates to you some of the problems confronting the U.S. Government in implementing and in enforcing the nontariff barrier provisions of the agreement, if other signatories view it primarily as a tariff agreement, clearly we have some problems on the nontariff barrier side, in terms of subsidies, politicized marketing and that sort of thing.

It will probably be close to impossible either on an ongoing consultation basis or in a new round, to engender the necessary political will. We therefore, think that if we cannot through diplomatic or moral suasion get closer observance of the rules then the rules have to be strengthened and so do the enforcement mechanisms.

If I could have Ms. Sherbeck touch on the first part of your question though, you cited Ambassador Yuetter's reference to the consultations in Geneva. Since she participated as an industry observer, perhaps she can touch on that part.

Chairman GIBBONS. All right, fine.

Ms. SHERBECK. As I mentioned in the testimony, those consultations were held between the U.S. Government, France, Great Britain, and West Germany, being the primary producers of large civil aircraft, in the world. The U.S. delegation was comprised of representatives both from the U.S. Trade Representative's office and the Departments of Commerce, State, Justice, and Labor. As Linda mentioned, there were industry advisors present. The specific issues that were discussed included: subsidies, including transparancy, an enforcement mechanism, and Airbus launch support; inducements and politicized marketing; sales to national airlines; and directed procurement of aircraft components and equipment.

Reflecting the administration's tougher stance on unfair trade practices, Bruce Wilson, who is the Assistant U.S. Trade Representative for Industry and Services, and led the U.S. delegation, opened the talks by reporting that he was operating under a Cabinet mandate to report back with findings and recommendations on the Airbus trade issues, to the Cabinet, after not more than two meetings with the European governments.

While it is too early really to comment on the specific resolution of any of those issues, the aerospace industry is very supportive of the Government's negotiations in this area, and feels that the discussions provided a good basis for the next talks which will be held in June of this year. Prior to the June meeting, we understand that the governments will be exchanging, with the help of the companies involved, information and elaborating on the positions that they took during the March meeting.

We understand that the U.S. Government will also be submitting to the European governments specific written proposals for methods of ameliorating the cited problems.

We are hopeful of achieving real progress toward our goal, which is establishing a truly commercial basis for international trade in civil aircraft. I have with me a letter from AIA's president, Dr. Carl G. Harr, Jr., which describes our position in more detail. The letter is to Ambassador Yuetter and I would be glad to submit that for the record.

Chairman GIBBONS. Could you put that in the record at this point so that we would have that there?

Ms. SHERBECK. I would be pleased to do that.

[The letter referred to follows:]

Aerospace Industries Association of America, Inc.

Office of the President

January 28, 1986

The Honorable Clayton Yeutter
U.S. Trade Representative
600 17th Street, NW
Washington, DC 20506

Dear Mr. Ambassador:

I am writing to congratulate you on your success in bringing the Europeans to the discussion table and to offer some suggestions from an industry perspective that I hope will be helpful in your preparations for those discussions. I view the recent invitations of the French, British and German governments to discuss international trade in civil aircraft as an indication of the success of the Administration's tougher stance in combating unfair trade practices.

The upcoming consultations provide a truly unique opportunity to focus on European trading practices clearly outside the intent of the GATT Agreement on Trade in Civil Aircraft and to seek to redress those practices through consultation rather than confrontation. Unfortunately, political pressure within the United States over trade issues may make this opportunity short-lived. I believe that, if aggressively pursued, these discussions can achieve significant progress toward fairness in world aircraft trade which has been stymied in numerous recent consultations -- much to the frustration of the U.S. aerospace industry.

The goal of the U.S. aerospace industry is to establish a basis for trade in civil aircraft that is in reality commercial and adheres to the intent of the Agreement. This entails: (1) the disclosure of governmental financial support to civil aircraft programs, including provisions of recovery and recoupment; (2) the limitation of government subsidies (including grants and low interest or nonrecourse loans) to research rather than aircraft development or production efforts; (3) the prohibition of economic or political inducements for aircraft sales, and (4) the prohibition of political or ministerial influence in aircraft sales.

While I believe during the upcoming discussions the onus is on the Europeans to offer solutions which would significantly improve adherence to the Civil Aircraft Agreement, I urge you to restrict the agenda to those unfair European practices where improvement can realistically be expected and to pursue them with urgency. I would also suggest the U.S. government be prepared with a very specific list of its requirements for next month's consultations. I would propose the following requirements which can be achieved immediately as an initial step in reaching this goal:

Agreement on an interpretation of Article 4.4 of the Aircraft Agreement that includes a list of examples of the kinds of political and economic inducements prohibited by the code;

Agreement on an interpretation of Article 6 of the Agreement on transparency which accomplishes our objective of greater disclosure of government support of civil aircraft programs (I would be glad to suggest specific language if it would be useful) and a specific timetable for its implementation;

The support of France, Great Britain and Germany for the formal adoption of this interpretive language by the full Aircraft Committee; and

Agreement to prohibit political or ministerial influence in aircraft sales.

I hope these suggestions are useful to you. If the above requirements are met, we will have taken an important first step toward establishing -- as was intended by the Agreement -- commercial competition as the norm and basis for trade in the civil aircraft sector. There will have to be additional steps (particularly in the areas of government supports and dispute settlement) before the aerospace industry can be fully satisfied that the GATT Agreement on Trade in Civil Aircraft represents an effective, enforceable set of international trade rules.

You have my complete support for your efforts. If I can be of assistance in any way, please do not hesitate to call upon me.

Yours very truly,

Karl G. Harr, Jr.

cc: Bruce Wilson, USTR
Crawford Brubaker, DOC

Chairman GIBBONS. We are as a committee very interested in the civil aircraft trade, because one, it is obviously an area in which we do have some skill and some comparative advantage; and two, the uniqueness of the sectoral approach to solving a problem, and the fact that we negotiated it as a most-favored-nation provision. I think that we have had the most-favored-nation provision out there long enough and if we are not getting reciprocity, on most favored nation, I am tempted to modify that agreement to the extent that we limit the length of time that we will let our industry sit out there with no tariff barriers and have others have all kinds of tariff and nontariff barriers and just enjoy the MFN treatment in this market.

I am not about to give away the U.S. aircraft market to countries that do not offer us a reciprocal opportunity.

Ms. SHERBECK. If I may comment, I think that in large measure most of the aircraft producing nations in the world, are signatories to the aircraft agreement and do recognize its codes. The aircraft agreement however, does reference the more general GATT codes. It is because of the infant industry protection mechanism that we find the problems that you are addressing—the countries involved are, once again, Australia, Brazil, Indonesia, and Israel.

These countries do have that duty free treatment and we would strongly encourage in the new Round, both that the U.S. Government urge them to sign the aircraft agreement and live by its provisions, and that the Government support sectoral graduation in reducing infant industry protection as an industry does become competitive in the world market.

Chairman GIBBONS. Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman. I would like to thank this panel, it has been quite illuminating.

Mr. Katz, do me a favor, tell me a little bit about the National Foreign Trade Council, who are you and how many are you?

Mr. KATZ. We are over 550 and the group accounts for——

Mr. SCHULZE. 550 what, individuals?

Mr. KATZ. No, 550 U.S. companies and the council membership accounts for over two-thirds of U.S. exports. I think that the roster of membership would be a very familiar one to you. Most of the major U.S. corporations in international business are members and supporters of the council.

Mr. SCHULZE. From your testimony, it seems to me that you think that GATT is just doing a marvelous job.

Do I misread you?

Mr. KATZ. Yes, I am afraid that you do.

Mr. SCHULZE. Because you know, and I am not against GATT, but I cannot point to anything in the last 2, 4, or even 6 years, that GATT has done which I think is furthering free and open and greater world trade.

Mr. KATZ. Well, it is certainly true that on the issue of dispute settlement GATT has been woefully inadequate and whenever you set up a body of rules, you would hope that the organization responsible for administering those rules could enforce them

But if I may depart from that for a moment, it is also true that when you have a body of international trade as much trade as we have in the world, it is essential that you have a set of rules and

understandings as to how the game ought to be played. And since the GATT was created in 1948, the extent to which those rules and the understandings arising from those rules have enhanced international trade, is enormous, although it is hard to measure. It is much easier to point to the cases of disputes when GATT has not moved quickly, than it is to establish the extent to which a set of rules has helped companies all over the world say, "We feel better about conducting international business because there is a set of rules out there." So, what I mean to say about the GATT is that it is certainly not the be all and end all or the answer to all of these problems. But it is the best mechanism that we have got now internationally.

Mr. SCHULZE. I will not disagree at all with what you said. And if we look back, from the period of World War II on, and GATT has done a fairly decent job. My concern is the next 20 or 30 years in which international trade is probably going to be the dominant political and economic factor in most nations of the world.

And when I look at GATT in that light, I view it with fear and trepidation. I see a relatively ineffective organization in structure without the political will to change that and make it a viable definitive organization.

And that is why I have come to the conclusion that we need bilaterals. I would love to see bilaterals that would turn in to multinational, multilateral agreements but it seems to me that you have got to crawl before you walk.

It seems to me, also, that it is a no lose proposition because if we start working on bilaterals, and GATT decides, boy, we are going to lose our jobs here, unless we do something and really catches fire and gets moving. We have not lost a thing. I would love to see a dynamic forceful international organization on international trade. And I just do not see it. I see GATT now being involved with less than 10 percent of world trade, which is so small that it is hardly worth spending our time negotiating over there. Somebody has to build a fire under them. I see so many more difficulties negotiating with our European and Pacific trading partners, than I do perhaps with Canada, that I think that it is vital that we go ahead with a bilateral for Canada.

I am convinced that if we do not develop a good bilateral with Canada, and if we only depend upon GATT that the world trading order in the year 2000, could be and may very well be just absolutely chaotic. If we do not take a strong lead in international trade, the international trading structure is going to disintegrate.

Now, I hope that I am wrong but I am working on that basis and I am going to work on the basis that we cannot rely on GATT and that we have to have another avenue. And from going over your testimony, it seems to me that you put all your eggs in one basket. I hope that your companies do not feel that way and we end up holding an empty basket in the year 2000. And I am not concerned as much about what has happened, as I am about what is going to happen in the next couple of decades.

I did not intend to make a speech but I guess I did. Do you want to comment?

Mr. KATZ. Yes, thank you very much.

I should begin by saying that the council does support wholeheartedly the potential bilateral negotiations with Canada. We think that is an important trading opportunity and we agree with you that the United States should take the strong lead, both in that way, but also in the international context. If my testimony does appear to put all eggs in one basket, then I need to append to it, the thought that, as I have indicated, the GATT is essential and we think that those rules are essential. We think that they can be strengthened. We know that there is a Secretariat in Geneva, and it is understaffed. And it has not had the strong vote of confidence, if you will, from member states. For example, I had the good fortune to have conversations with Chairman Gibbons about this a few weeks ago and he said at that time, if I may quote him "Perhaps the United States Government ought to consider binding aribtration in some of these matters."

And I responded by saying, "Do you think that the United States is prepared to give up that much sovereignty?"

And he said, "Well, perhaps we have got to think about doing exactly that," if I recall correctly. Any international organization is only as strong as its members are prepared to make it and if the United States is prepared to take the lead, with its Eurcpean trading partners and others, who have resisted these dispute settlement panels, it is only in that way that we can make it a stronger and more meaningful institution.

Mr. SCHULZE. Thank you and I thank the panel and I thank you, Mr. Chairman.

Chairman GIBBONS. Thank you. That is an accurate presentation of my position. This concludes the subcommittee's hearings on the trade reform. Witnesses will have until the close of business tomorrow, April 18, to submit any additional statements or to make any corrections that they want to in their other statements.

The subcommittee will begin markup next Monday, April 21, at 1 p.m. on a comprehensive trade reform bill. Our markup will continue as necessary through next week so that we can report to the full committee by April 28.

I might say that we have had a discussion draft here for the benefit of the witnesses who wanted to make suggestions about it. We will have a discussion draft modified somewhat from the provision that has been available and it is just a discussion draft. It will be sort of an outline guide for proceeding in the markup and it will not enjoy greater status than any Member's amendment.

It is there mainly to act as an agenda for our consideration. I do not know whether the committee will prefer to do this markup in open session or closed session.

If my memory serves me correct we have never marked up a major piece of trade legislation in open session but Members may want to do that. That is up to them to decide. I hope that we can get a good, decent trade bill out of the subcommittee, and if we cannot, as subcommittee chairman I might end up having to oppose the work of my own members but I do not believe that it is going to happen that way.

I appreciate the care and concern that all witnesses have given and particularly, members like Mr. Schulze, who have been so not only prompt in attending the hearings but patient and thorough.

This has been a good set of hearings and has raised some fine issues.

Unless someone has a statement that they would like to make for the good of the order, the meeting is adjourned.

[Whereupon, at 12:30 p.m. the hearing was adjourned.]

[Submissions for the record follow:]

STATEMENT OF THOMAS L. HUGHES, PRESIDENT, ASSOCIATION OF AMERICAN CHAMBERS OF COMMERCE IN LATIN AMERICA

The Association of American Chambers of Commerce in Latin America (AACCLA) is gratified to have the opportunity to present its views to this distinguised subcommittee on omnibus trade legislation. The opportunity you have granted this Association over the years to present its views on topics of concern to member Chambers of Commerce is very much appreciated.

Since 1967 AACCLA has acted as a clearinghouse for information and as a coordinator for programs of common interest to the twenty-one individual American Chambers of Commerce located throughout this hemisphere. These Chambers, representing the American business community in their respective countries, are important to the United States as they represent 18,000 individuals and companies actively engaged in expanding American trade with and investment in Latin America and who also serve as a window to their local communities for American ideas and practices.

You will understand, then, that AACCLA views this proposed trade legislation from the perspective of trade between the United States and Latin America. AACCLA's Board of Directors believes that the legislative and executive branches of the U.S. Government should, in formulating and implementing legislation affecting international trade and investment, take into account the special commercial relationships which have always existed between the United States and the Latin American nations, the traditional predominance of U.S. goods in Latin American markets, the importance to the United States of having friendly, prosperous and democratic governments in its neighbors to the south, and the desirability of assisting the Latin American countries in servicing the heavy burden of the debt which they owe to the U.S. and to banks.

It is, therefore, very important in our view that the United States encourage liberal access to its markets for its neighbors to the south. There are sound reasons for this.

First, it is in American interest that Latin America earn the foreign exchange necessary to service its foreign debt. Without delving into how and why the U.S. banking community extended credit to Latin America, the fact remains that we as Americans can not now realistically expect Latin American countries to reform their economic policies, adopt measures of austerity and faithfully meet their international debt obligations while restricting access for their exports to our market. Progress has been made in coping with the burden of debt, but the problem remains. The best assurance for continued progress is for continued economic growth and expanding export earnings for the countries concerned.

One of the effects of the debt crisis has been the necessity of many Latin American countries to undergo economic adjustment programs designed to improve foreign exchange earnings. A feature of their success has been that in 1985 Latin America achieved an estimated $25.4 billion surplus in its international trade. Unfortunately, much of this was achieved through reductions in imports.

Of greater importance is the fact that the United States is the principal market for Latin American exports, accounting for 47% of the $103.5 billion exported in 1985. Viewed from the perspective of the United States, imports from Latin America declined by two percent in 1985, compared to an increase of seven percent in imports from the rest of the world. Declining imports can largely be explained by declining petroleum prices. The closing of one refinery in the Netherlands Antilles, for example, was the single most important cause of the decline of U.S. imports from the Caribbean Basin countries, aggravated to a degree by reductions in the import quotas for sugar.

Trends in international trade for Latin America in 1986 are mixed. Declining petroleum prices will seriously reduce export earnings for countries like Mexico, Venezuela, Ecuador and Peru, but ease import costs for consuming countries like Brazil and most of the Caribbean Basin states. Rising coffee prices have helped some, but not Brazil where their drought is the cause of the price increase. In sum, it remains clear that Latin American countries have not been particularly successful in getting away from reliance on a few basic commodities for the bulk of their export earnings and that access to the U.S. market is crucial to their ability to fund their international debt and to promote economic development.

A second reason to support liberal Latin American access to U.S. markets is the higher propensity relative to other geographic regions of Latin American countries to import goods and services from the U.S. Thus increased export earnings on the part of Latin American countries are more likely to result in increased imports from the U.S. than would be the case of other regions. Further, U.S. export industries tend to be the most efficient within our economy so that expanding sales not only benefits the U.S. balance of payments, but U.S. productivity and international competitiveness.

To illustrate, while total imports for the region increased in 1985 by one percent, imports from the United States increased by four percent, reaching a total of $30.1 billion. This represented 38% of total Latin American imports. Latin America now takes 14% of all U.S. exports. Incidentally, this increase in U.S. exports to Latin America in 1985 took place in a year in which U.S. exports to the rest of the world declined by three percent.

Third, our interest that Latin America progress toward social justice, democratic institutions and political stability will not likely be served in the absence of sustained economic growth. It is clear from events since World War II that there is a strong correlation between export expansion and economic growth. Denying Latin America adequate access to the U.S. market for its exports is in effect to deny it a chance to achieve desperately needed economic growth.

AACCLA shares the concern of this committee with the extraordinarily large current account deficit now experienced by the United States. It is our view that this situation reflects a series of global macroeconomic factors and is not due to specific trade policy defects or shortcomings. We are pleased at the progress the Administration has made in recent months to bring the trade deficit under control. Success is not yet at hand, but progress is being made and AACCLA does not believe that this is the time to interfere with this ongoing progress through ill conceived, protectionist actions.

AACCLA also believes that steps taken by the Congress and the Administration to reduce the U.S. federal budget deficit have already begun to alleviate problems related to the trade deficit and debt crisis. The perception that both Congress and the Administration are serious in their attention to these matters is reflected in the dampening of inflationary expectations and lowered interest rates. It is our hope as well that reduction of the Government's need to borrow will contribute to more readily available capital for private sector investment and thus to improved U.S. productivity. Without commenting on specific measures, we would like to stress that in our judgment these efforts must continue.

As a consequence of the concerted action of the U.S. and its principal economic partners, the value of the U.S. dollar in terms of major currencies has declined. Since most Latin American foreign exchange rates are tied to the U.S. dollar, we can expect parallel effects on Latin American trade, such as an increase in the competitiveness of U.S. products relative to those from Europe or Japan. February U.S. trade figures suggest that a decline in the U.S. trade deficit may have begun, but owing to normal lags involved in trade transactions, it will be many months before the full impact of the lower valued dollar will be felt.

AACCLA is also pleased to note the increasing recognition that policies which lead to increased economic growth for developing countries benefit the United States. We believe that greater availability of financing through the coordinated approach of the World Bank, the International Monetary Fund and private U.S. banks as outlined in the plan developed by Treasury Secretary Baker can prove a very positive development.

Initial reactions by the IMF and U.S. banking community called for severe austerity programs in countries with heavy foreign indebtedness in order to reduce balance of payments deficits and the need for additional loans. As part of this austerity approach we have seen severe reductions in the ability of most Latin American countries to import from abroad. Additional resources made available to these countries will help produce domestic investment and expanded economic activity with resultant beneficial effects for social progress and political stability. And, of interest to the U.S., an enhanced need for, and ability to finance, imports of U.S. goods and services. Higher levels of trade can only be helpful to both parties.

A second, broad grouping of measures being undertaken by the United States are those designed to improve the competitiveness of U.S. exports. AACCLA applauds these initiatives, many of which have been long in coming. It is about time that government-imposed obstacles to U.S. exports were removed. These measures include:

1. Modification of the Foreign Corrupt Practices Act (FCPA). We oppose corruption, but the FCPA places unrealistically high standards on U.S. business, resulting in a competitive disadvantage relative to foreign business, and is unclear in part, leaving American companies open to prosecution depending upon interpretation of the Act, and is an American effort to deal unilaterally with issues better left to multilateral agreement.

2. Modernization of U.S. antitrust legislation particularly with relation to permitting cooperative action by industry members severely affected by imports. The existence of strong foreign competition assures that the U.S. consumer will not suffer from cooperative efforts on the part of an embattled domestic industry.

3. Rationalization of U.S. laws and practices with respect to the export of pharmaceutical products not licensed by the Food and Drug Administration.

4. More effective protection of U.S. intellectual property rights through modernization of U.S. patent law to better combat the problem of counterfeiting and to enhance coverage of software and genetic materials..

5. Creation of an export "war chest" to enable U.S. exporters to compete in situations where foreign governments have provided excessive export credit subsidies.

AACCLA would like also to go on record in support of the President's International Investment Policy. The principle that American investors abroad should receive the same fair and nondiscriminatory treatment that foreign investors find in the United States is a basic tenet of our Association. We believe that modifications to Title III of the Trade and Tariff Act of 1984 provide sufficient authority for the Administration to pursue "national treatment" for U.S. investment abroad.

We support further liberalization of trade-related investment as a goal of upcoming multilateral negotiations. AACCLA member chambers are concerned over the practice in many Latin America countries requiring export performance, local content, mandatory joint ventures and other burdensome or discriminatory policies, but

believe that negotiations to overcome these should be carried out on a country by country basis with careful consideration given to the potential impact of such negotiations on the interests of U.S.-owned or affiliated companies already operating in the country in question. AACCLA would not see the need for further specific legislation at this time, but will continue to watch closely the impact of Administration implementation of its policy.

AACCLA hopes that consideration will be given to the various proposals for valued added or business transfer taxes. Unlike many of its trading partners, the United States has little in the way of federal taxes on products. The dependence of many foreign governments, particularly in Europe, on value added taxes rather than on personal and corporate income taxes provides a competitive advantage in terms of exports since the GATT rules allow rebate of taxes on products entering into international markets but not of income taxes. We do not presume to suggest specific tax measures but suggest that a shift to product-specific taxes could benefit American export industries.

Regarding these specific trade measures, we would like to stress that we do not view them as substitutes for the basic measures we listed as essential to counter macroeconomic conditions. We do think they play a useful role in resolving problems and not creating new ones.

We strongly support a new round of multilateral trade negotiations and, toward that end, endorse granting broad negotiating authority to the United States Representative for Trade.

Trade negotiations serve two purposes. First, they give momentum toward further trade liberalization. Despite the vision of the GATT founders of a free flow of trade, many barriers still remain. While average tariff rates are low, some specific rates are sufficiently high to warrant further reduction in the interest of expanding trade. Attempts to deal with non-tariff barriers to trade, begun in previous multilateral negotiations, must be

continued as further progress is required. Second, the GATT should also be broadened to cover such new areas as intellectual property rights, trade in services, trade related investment and trade in high technology products.

We believe that the type of negotiating authority provided in the Tokyo Round remains appropriate. It required close consultation with the private sector and the Congress, provided executive discretion in reducing tariffs up to set limits and provided for expedited Congressional approval of agreements when and as reached. Basically, this form of authority provided the assurances to U.S. trading partners necessary for serious negotiation.

It is our understanding that among the issues to be debated during Congressional consideration of negotiating authority will be the selection of specific objectives to be attained by U.S. negotiators. These may reflect proposals before the Congress for unilateral steps to to correct what are perceived as abuses in the international trading system harmful to U.S. exporters, including mechanisms established by U.S. trading partners not foreseen by, or outside the coverage of, the GATT. In place of unilateral actions which could place the United States in violation of its GATT obligations, subject U.S. exports to retaliation and, more importantly, undercut U.S. credibility in arguing for observance of strict standards, we believe it would be more appropriate for Congress to demonstrate its concern by instructions to the Administration to treat these issues in the context of the MTN.

AACCLA also urges that bilateral negotiating authority be maintained since this offers the possibility for progress on trade issues complementary to the multilateral negotiations and could be particularly useful in relation to Latin America. Examples of these possibilities include the Caribbean Basin Initiative and the Free Trade Area agreement with Israel.

From the unique perspective of the AACCLA we are concerned with a number of proposals mentioned in connection with an omnibus trade bill.

We strongly support the system of checks and balances inherent in the current U.S. system. Interagency consideration assures that any decision on trade or trade policy is viewed in all of its implications. Thus a decision to close U.S. markets to so-called injurious imports must take into account a range of American interests such as the effect on overall U.S. competitiveness (Council of Economic Advisors), the effect on foreign exchange earnings of the large debtor nations (Treasury), on the potential for trade retaliation (USTR) and on foreign policy (State). The President's role as chief guardian of the "overall national interest" should be maintained. Thus we oppose proposals to remove the President and the non-trade agencies from the decision making process.

We have stated our concern over possible U.S. actions in violation of the GATT. We strongly support efforts to improve GATT's dispute settlement mechanisms so as to produce prompt decisions and clear statements of what is or is not permitted under the GATT. Such improvement will not be either quick or simple and the U.S. should allow adequate time for negotiations to bring about the desired changes. AACCLA opposes the concept that the U.S. should take upon itself the responsiblity to judge whether actions of third countries violate GATT rules and are subject to retaliatory action. This offers a dangerous precedent which could result in U.S. trading partners passing similar judgment on U.S. exports and to an overall breakdown of the multilateral system built up painstakingly since World War II.

We oppose sectoral protection, whether for copper, footwear or textiles. Current trade laws provide an opportunity for remedy. If specific industry requests for relief are turned down by the agencies charged with this responsibility, there should be no rush to special legislative remedies to the detriment of overall U.S. interests and in violation of international rules.

We are concerned with other proposals to change U.S. trade statutes unilaterally in violation of international rules. Such changes, we wish to repeat, place U.S. exporters in jeopardy and make U.S. insistance that others adhere to international rules all the more difficult.

AACCLA is particularly concerned about one such proposal. This would subject to U.S. unfair trade statutes imports produced with low priced energy or other primary product inputs. This proposal would have a heavily negative impact on the export industries of Venezuela and Mexico, as well as creating troublesome possibilities of retaliation against U.S. exports if U.S. trading partners should choose to apply the same criteria.

We are also concerned about proposals to shorten the time periods and otherwise accelerate decisions in trade policy cases. Current time periods and decision points represent in our view an acceptable balance between the needs of petitioners for prompt relief and the needs of foreign defendants to prepare replies to these charges.

An especially serious threat to Mexico and other Latin American exporters of fruits and vegetables is the so-called fast tract relief for perishable products. Under certain proposals escape clause relief could be imposed within twenty-one days of a complaint based on very scanty evidence of market disruption and without consideration of factors normally required in escape clause proceedings, such as the interests of consumers or of the national economic interest. Although these proposals purport to be modeled after provisions in the Caribbean Basin Economic Recovery Act and the U.S.-Israel Free Trade Area Agreement, they ignore the fact that in these two acts relief is limited to restoration of normal U.S. tariff rates. What is proposed is the imposition of quantitative restraints without adequate consideration of all the factors involved.

Finally, we are concerned with proposals designed to remove countries from GSP eligibility. We believe these proposals violate the spirit of the Trade and Tariff Act of 1984 which provided that the more advanced developing countries would retain eligibility, and even possibly expanded consideration, under GSP, in exchange for willingness to open their markets further to American products, services and investments. Current proposals ignore this trade off, seeking to "graduate" countries like Brazil and Mexico, reducing international market access rather than expanding it.

Our testimony today is not an exhaustive list, but rather has been intended to highlight AACCLA concerns over some of the proposals under consideration by your committee. We plan to monitor developments closely and should further matters of concern arise we will hopefully have the opportunity to express these new concerns.

In conclusion, AACCLA wishes to emphasize its support of measures to improve the overall competitiveness of the United States, reduce barriers to exports and to modify trade legislation as proven necessary. We believe that multilateral trade negotiations offer a far better avenue to achieve these objectives than unilateral U.S. actions. We also urge continued attention to American self-interest in the promotion of Latin American access to the U.S. market and that the U.S. goal must be to expand that access, not restrict it.

Thank you.

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April 25, 1986

The Honorable Dan Rostenkowski
Chairman
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

We represent and are writing on behalf of the Auto Internacional Association (the "Association"). The Association is an industry group representing over three hundred importers, exporters, manufacturers and distributors of parts and accessories for imported motor vehicles. The industry supports over one hundred thousand (100,000) Americans. We appreciate the opportunity to submit our comments and concerns over the discussion draft of the "Comprehensive Trade Policy Reform Act of 1986."

The Association is a supporter of free trade among and between the United States and its trading partners. In the past we have supported the devaluation of the dollar. We also support any program which will fairly enhance the competitiveness of United States' industries. The trade deficit remains a problem. The present Administration has, however, succeeded in curtailing the trade deficit through sound fiscal policy and negotiation. The Administration has not resorted to the creation of barriers except in those instances where unfair competition had clearly been shown.

With this background in mind, we are concerned over certain portions of the draft omnibus trade bill which is being considered by your Committee. The first area of concern is the removal of certain flexibility in the foreign trade area which has traditionally been accorded the President. Decisions

regarding international trade cannot be made without consideration of National security interests and have generally been made by the President or those to whom he delegates authority. It seems to us unnecessary and possibly counter-productive to mandate by law the delegation of that Presidential authority to the Trade Representative. This legislative delegation seems designed to undercut useful communications between officials with differing expertise in the executive branch. Further, the relationship between the Trade Representative and the President is not clear as to whether the President retains control over the Trade Representative. This is especially true since, under the draft, Congress grants itself veto power over certain of the Trade Representative's decisions.

Another manifestation of the removal of executive flexibility appears on pages 10 and 11 of the draft. In this section the new law would limit to ninety (90) days any delay in the implementation of an import relief action. We believe this is insufficient time where delay may become necessary because of progress being made in a particular area or for various other policy reasons.

The Association is concerned that the draft would open a floodgate of cases before the International Trade Commission by lessening the standard upon which relief from imports may be granted. Imports should be both a substantial and a primary cause of injury before such relief is granted. The Association supports the current standard. To change this standard will not increase productivity. Instead, it will increase the price of goods to U.S. consumers, monopolize the U.S. market in certain industries, and remove an important incentive for U.S. industry to become more efficient. This will in turn invite interference with the activities of the import industry, as well as with our international trade policies.

Finally, the Association is concerned with the export targeting provisions of the draft legislation. It is our position that the current law under the Trade Act of 1974 already provides for remedies in these situations. We would note that the definition of export targeting contained in the draft is considerably too broad. Further, the draft does not impose any requirement for a finding of "bad faith." This could result in unjustified sanctions against imported goods.

Based on the foregoing reasons, we urge your Committee to amend the draft in the fashion requested in this letter. Specifically, we would urge you to maintain executive flexibility in this area and to leave intact the existing standard for import relief.

Sincerely,

John Russell Deane III

JOHN RUSSELL DEANE III

STATEMENT

of

Donald W. Bedell

of

BEDELL ASSOCIATES

to the

Subcommittee on Trade

House Ways & Means Committee

in the matter of the

International Trade Legislative Reform Hearings

April 18, 1986

It is from the perspective of 3 years of retirement, after 30 years of corporate and consulting experience the last half of it in Washington, that I offer these comments. Never, in the history of the Republic, has there been so urgent a need for the Congress to re-form" and "re-cast" federal statutes affecting international trade.

It is conventional to view reforming trade statutes in terms of modification and refinement of existing language; a kind of fine tuning. The traditional starting point for "reform" is language already in place. Most of the language in U. S. trade statutes has dealt with past commercial practices long abandoned. The history of "fine-tuning" has rarely dealt effectively with anticipated commercial reality. Had it done so, these hearings would clearly be unnecessary.

This concept should be characterized as the micro-law approach. America has pursued it for more than 40 years. On the assumption that it was intended to advance the rule of law, it has failed America. It has failed because no provision has ever been made to test the basic policy premise. There was no leapfrogging in concept that could anticipate devices and manoeuvres that might be used by predatory nations in the brutal world of international trade.

What defies explanation is the need to spend so much time on refinement of legal language at all. The Congress has agreed that the President, on a political basis, must retain the ultimate power of

decision. Such decisions are 100% political, just as are decisions elsewhere in the world. So much effort by so many, to achieve so little real change in legal language!

The 1962 Trade Expansion Act, the Trade Act of 1974 and the Trade Agreements Act of 1979 are the most recent examples of micro-law. The 1962 Act dealt primarily with tariff matters. But, America's trading partners had well developed plans to assault that market using the most ingeniously contrived subsidies and other extra-legal incentives, not covered by the 1962 Act. In most cases, the subsidies were managed by a government-industry partnership which had existed for more than 600 years in Europe and for a similar but abbreviated period for Japan.

The 1974 Act was content to [illegible] non-define definitions of words like "injury," "industry" and the procedure for "dumping," and establish an improved procedure for excessively burdening American business interestd to protest damage to industry. It also authorized the Executive Branch to set up within the administration what was clearly a complex, decision-defying, decision-making "non-transparent" procedure.

The 1979 Act essentially attempted to tighten definitions and require more public information be published without affecting the process itself. It also once again acquiesced in the Administration's demand to make commercial decisions on political grounds, generally hiding behind "national security" considerations. Typically, public explanations of "national security" were vague even when offered in some detail. The decisions were, all the same, political, not economic, as with most countries.

One result of the application of the micro-law Presidential veto concept has been to make superfluous the independent fact-finding role of the USITC and the Commerce Department complete with thoughtful and specific recommendations.

All during those 25 years since the 1962 Act, the federal government was never required, or did it ever offer, to provide the nation with an International Trade Budget! Proof enough that political settlement of future political disputes could not be anticipated and had to be deferred until future facts were presented. All the same,

the federal government is required by law to accept a domestic budget with the same political considerations characteristic of international trade.

In the national interest, the nation must come to a publicly announced international trade budget, and let the domestic debate rage over which industries would be sacrificed by how much and for what reasons. What are the limits of exchange rate fluctuations, for what purpose, and for how long? What plan does the federal government have for this nation's industrial and consumer elements of society?

The fact is that, despite claims to the contrary, decision-making in the United States is no more "transparent" than in most other countries. The Congress makes no decisions, and neither does the USITC or the Commerce Department. That process is centralized in the Oval Office where the President decides after hearing from a handful of key advisers. Nothing "transparent" about it.

There is a measure of *free* market *forces* in the national debate at least. The liberal economists, large numbers of academia and many politicians have been permitted freely to sell the American public the most flagrantly incorrect, and perhaps dishonest, bill of goods of all time.

Americans have been encouraged to believe that international trade functions on 5 simple trade principles. They are simple enough, but wholly false and and irrelevant, as we all now know.

What are those irrelevant beliefs?

1. That the vision of "free market forces" actually operates in international trade.

2. That all nations do not establish trade policy based on a political contest between the forces of "free trade" and those of "protectionism."

3. That a world-wide "economic man" appeared at the end of World War II and that monetary tinkering can be so tuned that human motivations and aspirations can be routinely anticipated and are fully controllable.

4. That legal language can be drawn to plug all loopholes on import statutes whose purpose is to defend against aggressive foreign commercial and government interests.

5. That economic nationalism ended with World War II and can be discarded in policy-making with impunity.

A simple reading of history provides all the evidence needed to destroy all 5 of these so-called "principles."

The record of international commerce from its modern beginnings in Europe 600 years ago up to World War II is crystal clear. The record shows that trade policies of all nations was based on simple political self-interest. That history is one long blur of wars, recovery from wars, preparing for new wars and predatory "beggar-thy-neighbor" trade policies. Typical methods used to manage their international trade were government ownership of commercial facilities, cartels, monopolies, broad use of subsidies and import barriers selected for their contribution to each nation's economic benefit, and financial support incentives for favored industries.

On the record, no "free market forces," or "free trade" fantasies were ever the foundation of the trade policy of an American trading partner, up to World War II at least. Nor "protectionism" either for that matter.

Has the post-War era among America's trading partners been different?

Yes, politically. There have been no wars.

No, economically. International competitiveness in the commercial sector has intensified.

For example, Europe and Japan lay in ruins in 1945. Their political focus was naturally on economic recovery. Recovery was based strictly on historic internal commercial practices of each country. That, most certainly, meant re-establishment of government-owned facilities, cartels, monopolies, and subsidies and other incentives calculated once again to achieve national goals. No mention of "free trade." Trade "liberalisation" was given mention but it referred primarily to the internal European Community.

The GATT was organized in 1947, but the 1958 Treaty establishing the European Community 11 years later made no mention of the GATT. Thus by the early 1960s, when the great trade assault on American markets began, the EC-10 and Japan had not acknowleged allegiance to any "liberalization" scheme. Nor, of course, did the newly industrialized countries.

The result is continuing compromise of its GATT principles in favor of political accomodation. The result of the compromises, both in language of the GATT and its dispute settlement mechanism, is failure of the GATT itself. Despite the brave talk recently, little chance exists for any basic change in the rules, though a major overhaul is required to avoid seeing it go the way of the United Nations.

American policy-makers after World War II were faced with two crucial questions in the development of policy.

First, were there any constructive lessons for the U. S. to draw from the centuries-old practices of its trading partners?

Second, could the tradition of combative economic nationalism be reversed by adoption of some new commercial concept?

Clearly, the post-War U. S. was interested in a new regimen, not a re-hash of centuries-old failed policies. While it found nothing in Europe's or Japan's past worth repeating, America has encountered insurmountable political difficulty in its attempt to rationalize European and Japanese economic addiction to past policies with the new idea of the GATT.

Far worse for America was the loss of economic momentum through the 1960s and beyond. The great import invasion beginning in the late 1960s brought to a halt that momentum, and left America without an international program or a philosophy. What did overwhelm America was the intrigue of a consumerism movement not duplicated anywhere on earth.

It began with Ralph Nader in the early 1960s, and continued on through "Truth in Packaging," "Truth in Lending," "Wholesome Meat Act" legislation, among many others. It continued through the 1960s and 1970s with the emergence of a widespread conception that American businessmen were dishonest and anti-competitive. American consumers could be rescued from their plight only by an ever-growing flood of imports. Since the federal government was unable, or unwilling, to stem the invasion, great numbers of domestic manufacturers who could moved operations overseas to take advantage of cheap labor, low facility cost and low tax rates. No initiative was undertaken to retain U. S. manufacturers at home. There is no record of any serious effort by government, or by the private sector, to measure the overall

short and long term impact of the consumer "revolution" on the nation as a whole.

American international trade policy apparatus was paralyzed. Forecasts of economists, federal government and politicians about deficits were consistently subject to massive error for 20 years. There was little acknowledgement that American laws were incapable, concpetually or legally, to deal with the predatory nature of the commercial invasion beginning in the 1960s. U. S. trade policy was not out of control. It was virtually inoperative.

The question was not whether "free market forces" or "free trade" or "protectionism" were at work. They all were, but the emphasis, as always, was on economic self-interest. The federal establishment did not comprehend the enormity of the invasion of the U. S. market place by foreign nations employing time-tested traditional government-industry partnership techniques and devices.

The question raised here is whether at last America does understand the nationalistic dynamics of international trade and can devise means to accommodate it and maintain a balanced policy based on what's best for all America. The post-War commercial world continues to mean control of international trade as it has for centuries.

For example, the EC-10 members continuously boast of their efforts toward trade "liberalisation." Yet, the policy is one of control. Agriculture is completely import controlled, down to country, product, quantity, and frequently price. It is a political balancing act without relationship whatever to international economics or product quality. For 30 years it has had quotas on autos, electronic products, coal, steel, textiles, machinery and apparel, among a quite full list of possibilities. On exports, all members have an elaborate system of subsidies and financial incentives, designed either to balance exports with imports or to achieve an export surplus. Likewise, all countries have legal methods to control domestic production and use it when needed.

No need to look to the EC-10 for examples of "free trade." There aren't any.

Likewise with Japan. There has been no "miracle" there. It has been classic "mercantilism" with the full range of import controls and

export incentives. All the myths about high productivity and low cost were convincingly exposed last September in New York when Secretary Baker succeeded in persuading Japan that the Yen was too low in price compared with the American dollar. A simple 25% increase in value should eliminate the fabled $1500/small car sales advantage over an American car.

Americans have been sold a bill of mythical goods by well-intentioned but inexperienced and naieve American economists and special interests, like the Government of Japan. Japan, on the record, remains the most tightly controlled major nation in the world. If any basic changes take place, it will most certainly result from commercial pressure, not any desire to advance the cause of trade liberalization. The decision will not be by popular will. It will be made by the Prime Minister and a few trusted advisers.

SUMMARY

Solution for American policy formation in 1986?

This approach rests on 5 foundations:

1. That the philopny of "free market forces" and "free trade" are relics of a dreamy past and without substance.

2. That control of international trade within each nation does in fact exist.

3. That the theory of "comparative economics" has never allocated the world's resources by any so-called "equitable" formula.

4. That legalistic solutions, the rule of law as envisioned in the U. S., does not in fact exist and is not likely to prevail.

5. That major international trade decisions by all trading nations are made at the highest level, and that no change can prevail.

The Congress should require the President, by statute, to develop and submit an international trade budget annaully. The statutory language should be similar to that authorizing the federal budget both in content and thrust. To establish the framework for the budget, the Congress, in conjunction with the President, should respond to the following general considerations:

1. Identify through public debate the role international trade should have in fulfilling America's objectives for all its citizens, 1, 3, 5 and 10 years out.

2. How much does an increase in international trade contribute to that standard? Which products and services? Can the same objectives be achieved with no increase in trade, or a decrease?

3. Relate the responses to considerations 1 and 2 to an import market share number for each SIC code product and service that most closely reflects the value such product or service is likely to contribute to the quality of life of all American citizens. Such market share computations could range from 100% share to 0% share.

4. Market share computations should be reviewed annually and revised when appropriate.

5. Treasury Department should be authorized to make adjustments in the exchange rate between the U. S. and all other countries by negotiation, and on an individual basis. Once established, adjustment could only be made beyond a + or - 5% without Congressional approval.

These recommendations bring the debate on international trade policy out of the closet. Gone will be the secret "understandings" so much a part of intnernational diplomacy and, therefore, international commerce. Any secret understandings will among the American body politic and their duly elected representatives.

Clandestine manoeuvres by the Federal Reserve or Treasury will be barred except within the narrow limits authorized in the budget legislation.

Each nation is free to sell its products in the U. S., under the overall market share assigned to each product, at any cost it wishes. If it subsidizes them, or otherwise illegally provides incentives, however, this recommendation includes continuing to give the Executive Branch the responsibility to bring cases under existing law for violations. If found guilty of violations, such country loses its market share for an established period of years.

Comfortable esoteric meanderings of Smith, Ricardo need to be discarded at last. The Chicago School of Economics (Professor Sprinkel) needs to be subjected to thorough review to establish a connection with the real world of international commerce.

This is the time for aggressive and imaginative leadership. Secretary Baker clearly understood the need to deal with, and accommodate, economic nationalism, theirs and ours, with forthright proposals and action.

Statement of W. Brendan Harrington
Cargill, Inc.

Submitted to
The Trade Subcommittee
Committee on Ways and Means

April 18, 1986

Mr. Chairman and members of the committee, I am Brendan Harrington, a public affairs representative of Cargill, Inc. I also serve as chair of the Coalition to Promote America's Trade (PAT), a broad-based coalition of companies that oppose so-called "natural resource" legislation.

I am submitting this statement to express the concern of my company and that of most agricultural interests over proposals before the 99th Congress to enact legislation designed to protect U.S. businesses facing increased foreign competition.

In particular, my company has been active individually and as a member of the PAT Coalition in opposing controversial legislative proposals to impose countervailing duties on imported products that have benefited from low-cost natural resource inputs in their country of origin. Last June, Jim Schultz of Cargill's fertilizer division testified before this subcommittee to express Cargill's opposition to such proposals. Although the subcommittee chose not to revisit this issue in the context of these comprehensive hearings, a great deal has occurred since June 1985 that should be taken into account before the subcommittee marks up natural resource legislation this spring.

In addition, for the purposes of these comprehensive hearings, natural resource legislation provides a good illustration of the costs, especially for agriculture, of many of the trade measures now receiving attention in Congress. In addition, such proposals, including natural resource legislation, both fail to address the problems experienced by particular industries and ignore the real, macroeconomic causes of this country's growing trade deficits.

Let me first clarify that Cargill has a parochial interest in natural resource legislation. Among other fertilizer operations, Cargill is involved in nearly every phase of nitrogen fertilizer importation and distribution and is also a domestic producer.

However, by far our greatest concern is over the many harmful ways in which imposition of countervailing duties under natural resource legislation, if enacted, would affect U.S. agriculture and our agricultural exports.

Natural resource legislation would expand the scope of U.S. countervailing duty laws to impose duties on imports of a wide range products simply because they are produced from low-cost natural resources in foreign nations. Under the leading proposals before this committee, countervailable subsidies would arise when a foreign government provides a low-cost natural resource to its local producers of downstream merchandise at prices below some presumed "fair market value" of the resource.

Sponsors of natural resource legislation maintain that the difference between the domestic sales price and that fair market value constitutes an impermissible export subsidy.

In general, under the General Agreement on Tariffs and Trade (GATT), a government may confer a benefit, including low-cost inputs, on its industries. However, the price of the benefit must not be below its cost to the government, and the benefit must be generally available--that is, not targeted to a particular industry or to exports.

Natural resource legislation was designed originally to counteract Mexico's GATT-consistent practice of selling natural gas to domestic consumers, regardless of the purpose for which the domestic consumer used that gas, at a price much lower than it sells gas for export. As now drafted, however, the several bills before Congress would reach far beyond Mexico, as more and more nations, particularly lesser-developed countries seeking to relieve huge debt burdens, seek to add value to their exports.

In effect, the legislation attempts to dictate internal pricing decisions to our international trading partners. If foreign countries export a resource for less than the domestic price, they would be subject to an antidumping action. If the price is higher, then the new countervailing duties would be imposed. That does not leave much flexibility.

The price of enacting natural resource legislation will be high, especially for U.S. agriculture. In its recent study, Wharton Econometrics has projected that in all, enactment of this legislation will cost the U.S. economy some 345,000 jobs over the next five years, while creating only 8,000 new jobs, as a result of increased prices and reduced exports. U.S. farm income alone would be reduced by some $24 billion over that time as a result of higher fertilizer prices and trade actions, according to the Wharton study.

Economists and other experts may quibble over methodologies or assumptions, but the Wharton figures undeniably show a clear trend. Jobs lost would vastly outnumber jobs saved or created under such legislation.

U.S. farmers, in particular, will suffer as countervailing duties establish a price floor for fertilizer inputs higher than the prevailing world price. Higher input prices will inevitably translate into higher grain and product prices at a time when U.S. agricultural exports already are down by 27 percent from 1981.

Moreover, because of the serious GATT implications of such legislation, it is highly likely that countries whose exports are affected by new duties will retaliate against U.S. exports, agricultural exports chief among them.

It is equally likely that other countries will follow the U.S. lead and enact similar legislation, which would affect numerous U.S. products that benefit from government-subsidized hydropower, irrigation, and a host of other practices. The United States itself has long distorted its domestic energy prices through price controls and special tax incentives.

Finally, it is not unreasonable to expect that U.S. exports of the same goods subject to the new duties will be backed out of foreign markets as the lower-priced foreign goods, denied access to the U.S. market, seek a home.

Like other measures, natural resource legislation fails to address the fundamental causes of the problems that the domestic nitrogen fertilizer industry has experienced in recent years. The low nitrogen fertilizer prices that gave rise to complaints against imports stemmed in fact from cyclical, temporary demand factors.

At one point, three major factors combined to reduce demand. The 1982 recession, a severe drought, and acreage reduction under the PIK (payment-in-kind) program precipitated a roughly one-quarter decline in nitrogen use.

Similarly, our fertilizer division reports that prices have been somewhat soft during this year's fall fertilizer season. But questions over acreage setaside programs under the then-unfinished farm bill and a late harvest--again, cyclical factors affecting demand--are attributed as causes of this price softness.

Moreover, lower natural gas prices--recently as low as $2.00 on the spot market--are serving to bolster the domestic industry, even in face of slack demand.

Thus, the domestic nitrogen industry is characterized in the short run by volatile swings in demand, influenced by a wide variety of factors affecting fertilizer consumption trends. In the long run, a further shift in production capabilities is occurring as new, more efficient plants are coming on line and older plants are being modernized both in the

United States and in other countries that desire to utilize better their comparative advantages in abundant natural resources.

Therefore, the countervailing duty approach contained in the various natural resource measures before the 99th Congress is fundamentally inappropriate as a response to the problems faced by the industry that those measures seek to protect.

The unilateral approach to pricing advantages embodied in most current natural resource proposals runs the very real risk of violating our international obligations. If indeed Congress makes the decision to change the treatment of natural resource cost and pricing advantages, there are certainly other, more responsible courses of action to pursue.

One approach, for example, is contained in the bipartisan Senate trade package, S. 1860, proposed last fall. This legislation would direct the president to raise natural resource cost advantages, along with some 10 other issues, in the context of a new round of Multilateral Trade Negotiations. Indeed, Chairman Gibbons' own discussion draft of comprehensive trade legislation implicitly acknowledges that the dispute over natural resource pricing and access practices is best resolved through an MTN round.

Although my company, and the other members of the PAT Coalition, do not believe that it is necessary to change the treatment of such pricing practices as they are now permitted under the GATT, multilateral, or even bilateral, negotiations seem a far more preferable approach than unilaterally imposing countervailing duties to offset a legitimate price/cost advantage.

Cargill last fall joined a group of 20 agricultural interests on a letter to each member of Congress in opposition to protectionist legislation that targets specific countries or specific industries. Natural resource legislation is just such a proposal.

And, like most other trade measures before this Congress, it is unilateral in nature and fails to address both the particular problems being faced by the industry it seeks to protect and the major causes of the nation's trade deficits--including the federal budget deficit and the high-valued dollar; the slower rate at which our trading partners are recovering from the recent economic recession, and the critical need of third-world nations to reduce their debt burdens.

In conclusion, both my company and agriculture generally are very concerned about efforts to enact legislation to protect various U.S. industries. Natural resource legislation provides but one example of how inappropriate such measures are for the problems such measures seek to address.

WRITTEN STATEMENT FOR THE RECORD

OF

THE COALITION FOR FAIR LUMBER IMPORTS

The Coalition for Fair Lumber Imports thanks the Trade Subcommittee of the House Ways and Means Committee for the opportunity to comment on the proposed trade reform proposals. The Coalition comprises all of the major U.S. softwood lumber manufacturers associations. These associations are the National Forest Products Association, the Northeastern Lumber Manufacturers Association, the Northwest Independent Forest Manufacturers, the Western Wood Products Association, the Southern Forest Products Association, the Western Forest Industries Association, and the Southeastern Lumber Manufacturers Association. These seven associations together account for more than 70 percent of U.S. lumber production. We will comment specifically on the proposed natural resource subsidies legislation (H.R. 2451) introduced by Chairman Gibbons.

The Coalition supports the natural resource subsidies language and hopes to see it as part of an omnibus trade package. We support this language because we believe that it would provide a much needed solution to the problem of subsidized softwood lumber being shipped to the United States by Canada.

As you are aware, the lumber industry is very important to the U.S. economy. Almost 8 million individuals own over 346 million acres of timber land. In 1984, 704,130 individuals earned a total of $11.9 billion in the lumber and wood products industry. Another 676,207 individuals, earning $17.5 billion, are employed by the paper and allied products industry, which is interrelated to the solid wood products industry. Clearly, the health of the forest products industry impacts our national economy.

The U.S. lumber industry by any measure should be enjoying good times. The consumption of softwood lumber is at record levels, fueled by a strong housing market and by record usage of softwood lumber in uses such as home repair and remodeling. Yet despite this record consumption, the U.S. lumber industry faces disaster. The U.S. lost a net 629 softwood lumber mills between 1977 and 1984, and mill employment dropped by 30,000. In 1984, the industry had pre-tax losses of over $300 million and wrote off over $600 million in assets.

The primary reason for the problems faced by the U.S. lumber industry is the flood of subsidized Canadian lumber into the United States. Both the Canadian and U.S. lumber industries recognize that the lumber industry suffers from severe overproduction of softwood lumber. Historically, price and consumption in the lumber industry have been closely related, but overproduction has resulted in depressed prices despite record levels of demand. The source of the overproduction is Canada. In fact, despite depressed prices, Canada currently enjoys about a $2 billion lumber trade surplus with the United States.

Canadian production increased by 103 percent since 1975 while U.S. production increased only 20 percent. Over two thirds of Canadian production is shipped to the United States. As a result, Canada's share of the U.S. market rose from about 19 percent in 1975 to 34 percent in 1985.

1985 softwood lumber consumption broke the record set in 1984. Did the U.S. lumber producers and employees benefit from this strong market? No. To the contrary, Canadian lumber imports supplied the entire increase. U.S. softwood lumber production in 1985 actually fell by several hundred million board feet!

Canadian producers and government representatives put forth a number of arguments to explain their progressively increasing share of the U.S. lumber market. However, none of those arguments explain the real problem faced by the industry. Why, in record demand years, is the domestic industry in such poor economic condition?

High Canadian logging costs do not justify extremely low Canadian stumpage. Low priced stumpage gives Canadian mills, on average, from a $39.00/MBF to a $52.00/MBF advantage in the price of logs delivered to the mill. In the B.C. Interior, the region which ships the most lumber to the United States, mills have a $97.00/MBF advantage over Western U.S. producers in the cost of logs delivered to the mill. Moreover, the noncompetitive Canadian system encourages artificial inflation of logging costs to deflate stumpage. To the limited extent that Canadian logging costs are higher than U.S. costs, it is often because the Canadian system encourages inefficiency.

Transportation costs of lumber by rail or truck (which account for approximately 90% of Canadian lumber imports) are roughly comparable in the United States and Canada. Waterborne shipments, while less costly from Canada, account for a small and shrinking proportion of U.S. consumption. The major lumber

producing and consuming regions are not easily accessible by water.

In Canada, about 95% of the timber is owned by the provincial and federal governments and sold in a noncompetitive market with prices set by a regulatory scheme. By comparison, over 2/3 of U.S. timber is privately owned, and virtually all U.S. timber is sold competitively. As a result, in 1984 U.S. timber sold for, on average, $104.16 per thousand board feet (MBF) while Canadian timber sold for, on average, $11.84/MBF. Subsidized Canadian stumpage induces production.

Canadian timber pricing simply does not reflect a fair market value. Canadian stumpage immediately north of the border sells for much less than virtually identical timber immediately south of the border. In fact, in a recent comparison by U.S. and B.C. appraisers of the same timber stand, the U.S. appraisal was about $10/MBF above the Canadian appraisal, and the estimated sales price in the competitive U.S. market was more than $36/MBF above the Canadian sales price.

Similarly, government timber sold noncompetitively in Canada, about 90% of Canadian timber, sells for much less than timber sold privately in Canada and much less than the small amount of government timber sold competitively. With large supplies of below market government timber provided in long-term leases, Canadian lumber firms have expanded capacity and increased production.

In Quebec and Ontario, where stumpage is set by regulation, the same price is charged for timber across huge tracts of land. In Ontario, for example, where stumpage is the same across the entire province, the cost of logs delivered to the mill differs by over $100/MBF according to Canadian data. It is certain, therefore, that some Ontario mills are getting timber from the Province at a bargain price, a price that fails to return fair market value to the Province.

Canadian provinces maintain below market stumpage to encourage production and the concomitant employment. In fact, in British Columbia the Ministry of Forests has sustained huge forest deficits in the last three reported fiscal years (i.e. stumpage is not covering the cost of administrating sales in British Columbia) in an effort to maintain B.C. employment. The net result is that as Canada exports subsidized lumber to the United States it also exports unemployment.

Stumpage fees are so low in Canada that they do not cover the cost of adequate reforestation. Experts predict that if current rates of production and reforestation continue, Canadian production will fall by up to 1/3 in 10-15 years. While the Canadian governments are now directly pouring hundreds of millions of dollars into reforestation, trees planted now will not mature in time to prevent the Canadian fall-down. Moreover, by that time the U.S. lumber industry will be in shambles. Absent a decrease in Canadian production in the near future, American consumers will soon be denied a stable, reasonably-priced supply of lumber.

The current high U.S./Canadian dollar exchange rate is not the primary cause of escalating Canadian lumber imports. In fact, Canadian inflation has so far exceeded U.S. inflation that the real value of the dollar vis-a-vis the Canadian dollar has not changed significantly since the end of 1978. The advantage which Canadian firms gain from undervalued stumpage far outweighs any exchange rate advantage.

According to the International Trade Commission productivity report, published in 1985, Canadian lumber firms are no more productive than U.S. firms. The aggregate amount of lumber produced by all softwood mill employees per year is higher in Canada than in the United States. When the productivity of Canadian and U.S. mill workers making similar lumber products is compared, however, productivity is virtually identical. Further, the total cost of milling a thousand board feet of lumber in the United States is less than the milling cost in Canada.

In 1982 the U.S. lumber industry filed a countervailing duty case against Canadian lumber imports. The suit claimed those imports are subsidized because the Canadian provincial goverments give Canadian lumber firms government timber at prices well below a fair market value. The International Trade Commission found that Canadian timber pricing practices were causing severe harm to the U.S. timber industry, but the International Trade Administration ruled that undervalued Canadian timber was not technically subject to a countervailing duty because it was available to several groups of Canadian industries (e.g. lumber, pulp and paper, furniture ...). In October 1985, the International Trade Commission released an updated report which showed that Canadian lumber firms pay only one-tenth of what U.S. firms must pay for timber.

In response to our pleas and others, on November 26, 1985, Ambassador Clayton Yeutter initiated high level talks with Canada on the lumber dispute. United States negotiators began working to solve the major problem of the domestic lumber industry, the noncompetitive stumpage pricing policies of the Canadian provincial governments. To date, however, there is no indication that the Canadians are willing to eliminate the benefit they receive from their timber subsidies.

The Coalition believes all producers -- Canadian and U.S. -- should compete on the basis of natural competitive advantages, not government giveaways. Our industry has maintained high levels of capital investment to consistently improve its productivity and maintain its position as one of the world's most efficient producers. Yet these efforts have been wholly negated by Canada's stumpage pricing policies.

The Subcommittee-passed natural resource subsidies "anti-subsidy" language (H.R. 2451) addresses the serious problem facing the domestic lumber industry and those communities reliant upon it. It would make natural resource "removal rights" provided by the government of an exporting country to one of its domestic industries at less than fair market value subject to duty. The fair market value would be determined by taking into consideration the price of non-regulated sales in the country of origin, the price of competitive government sales in that country, and the price of comparable sales in other countries. This language would help correct the unfair stumpage advantage provided by the Canadian provincial governments to their lumber industry. Rather than charging duties or creating quotas, it would revise the definition of subsidy to include "removal rights." The bill would provide an opportunity for the U.S. lumber industry to take its case to the U.S. International Trade Administration to prove a subsidy exists. The Gibbons Natural Resource Subsidy provision is a positive solution to the lumber trade problem. For that reason, we believe it should be included in any trade reform legislative package considered by the Committee.

STATEMENT OF THE COALITION
TO PROMOTE AMERICA'S TRADE

The Coalition to Promote America's Trade is an ad hoc organization of American petrochemical and agricultural companies that was formed in early 1984 to support fair and free trade and to oppose passage of so-called "natural resource subsidy" trade legislation.

Within the broad context of the trade issues that this Committee is presently considering, the Coalition would like to focus on the natural resource question, and wishes to emphasize two major points.1/ First, the concerns that underlie the "natural resource subsidy" proposals, when properly viewed, are not problems of unfair pricing practices by foreign governments. They are, therefore, not properly addressed through the countervailing duty law. Rather, the question of U.S. producer access to low-cost foreign natural resources and the underlying issue of reciprocity, which are at the heart of the natural resource debate, can already be effectively addressed under section 301 of the Trade Act of 1974. Second, in attempting to cast the natural resource issue as one involving unfair pricing and subsidies, the natural resource proposals incorporate serious conceptual flaws, so that their implementation would give rise to grave economic and trade-related repercussions.

- Arguments used to justify the proposals are based on a model of private business behavior that is unrealistic, and on a view of the legitimate scope of government activity that is contrary to the United States' own regulatory conduct.

- Enactment of such a proposal would have serious anticompetitive implications and serious trade repercussions.

- The proposals would be unadministrable and foreign compliance virtually impossible.

The Coalition would like to address each of these points.

I. AMENDMENT OF THE COUNTERVAILING DUTY LAW TO ADDRESS THE NATURAL RESOURCE QUESTION IS ILL-ADVISED

We would first like to outline our specific concerns about the legislative proposals that would amend the countervailing duty law. A few basic points deserve mention. The thrust of the natural resource proposals is to declare as countervailable the sale by foreign governments of government-regulated natural resources to local purchasers at prices below what is termed a "fair market price" and below the price at which the resource is sold to United States purchasers for

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1/ In this statement, the Coalition bases its position on the arguments presented in more detail in the recently published article, Barshefsky, Diamond & Ellis, "Foreign Government Regulation of Natural Resources: Problems and Remedies Under United States International Trade Laws," 21 Stanford J. Int'l L. 29 (1985).

export to the United States. The amount of the countervailable subsidy would be the difference between the foreign country's domestic price and the "fair market value" of the resource. The subsidy would be applied against a product made from the resource in the foreign country and exported to the United States.

In determining fair market value, the proposals authorize consideration of various factors. Such factors include the natural resource's export price, the prices at which it is generally available in world markets, whether foreign markets are available to the exporting nation to sell the natural resource, and the competitive market-clearing price at which the resource can be sold in those foreign markets.

It is clear from the description of the proposals that they do not and are not intended to attack the provision by governments of natural resources at prices below the fully allocated cost of production. Sales below cost can be effectively addressed under the current U.S. antidumping law. Rather, the proposals would radically expand the countervailing duty law to treat as countervailable subsidies a country's natural cost advantages. They would do so by redefining the concept of unfairness to include situations in which it is determined that government sales -- while made at prices not only above fully allocated cost, but above fully allocated cost plus profit -- were not profitable enough. This radical expansion of the countervailing duty law suffers from the following defects:

- The legislation expects governments to behave in a manner different from many private enterprises in making pricing decisions.
- The proposals conflict with the internationally accepted view of the scope of legitimate government activity.
- The proposals condemn government activities in the regulation of a nation's natural resources similar to those that have routinely been undertaken by the United States.
- The proposals have serious anticompetitive consequences in that they act to reinforce and strengthen the market power of cartels.
- The proposals would invite retaliation against United States exports by our trading partners, or the enactment of "mirror" legislation.
- The proposals are impossible to embody in predictable, enforceable legislation.

Allow us briefly to elaborate on these points.

A. The Proposals Expect Governments to Behave in a Manner Different From Many Private Enterprises in Making Pricing Decisions

The proposed legislation constitutes a radical departure from U.S. unfair trade laws and accepted principles of international trade. This legislation is not designed to condemn sales below fully allocated cost, nor even sales made at a handsome profit; rather, it attacks any sale made at less than the immediate short-term profit maximizing price. Until

the present proposals, the trade laws have never been interpreted to compel enterprises -- private or government-regulated -- to operate at a specified level of profit, let alone engage in short-term rather than long-term profit maximization. Yet this is precisely what the natural resource proposals would do.

This ill-advised expansion of the countervailing duty law is justified by proponents of natural resource legislation as a way to restrain the behavior of foreign governments by limiting them to actions taken by private businesses. The assumption made is that only one market strategy is available to a private company -- that of maximizing short-term profits. In fact, this assumption is often wrong. In forcing governments to pursue short-term profit maximizing strategies as the only way in which downstream products can "fairly" be sold on world markets, the proposals expect governments to behave in a manner that private enterprises often do not satisfy.

In contrast to the simplistic view of private business behavior embodied by the natural resource proposals -- quick sales at the highest price -- diverse market conditions and different attitudes toward risk and long-term growth may lead companies to pursue radically different marketing strategies. Companies may choose to undersell the market in order to trigger an immediate growth in sales. They may lower prices to selected buyers, or seek long-term supply commitments, all in furtherance of longer-term growth. Or a company that sees a potentially lucrative new market for its products may lower its prices to the infant companies that are creating that market to help improve their chances of success. These varied strategies are often adopted by U.S. companies; indeed, they are required by the diversity of the market place. To penalize foreign governments for pursuing similar long-term strategies simply imposes limits on them which U.S. companies have never had to meet. Similarly, to define as an "unfair practice" the failure to reap maximum short-term profits on sales made abroad sets an extremely dangerous precedent which could be used to attack as "unfair" our own U.S. exports.

B. The Proposals Are Contrary to the International Consensus as to What Constitutes a Subsidy and Conflict with U.S. Development of its Own Natural Resources

Not only are the natural resource proposals based on an unrealistic view of private business conduct, but they also ignore the internationally accepted nature of the government activities involved here. Governments are quite properly motivated by broad general welfare considerations that may result in behavior different from that of a private company. One means by which governments have attempted to improve their nations' general welfare is by developing their natural resources. The impact of such development on their societies may be dramatic.

The fact that a government acts to promote the general welfare of its citizens does not necessarily immunize it from the imposition of countervailing duties under current U.S. law and GATT principles. But the international community has agreed -- and the United States has firmly supported the proposition -- that such actions are exempt if the benefit provided is generally available to all citizens. Both the GATT Subsidies Code and United States law recognize that to be countervailable government benefits must be sector specific in nature. Generally available benefits -- such as U.S. control of oil prices in the 1970's -- have been staunchly defended by the U.S. as non-countervailable. Indeed, the European Community has accepted this argument, and in 1980, it agreed not to initiate a countervailing duty investigation of U.S.

petroleum-based products such as synthetic fibers, because the low U.S. regulated price of the natural resource was made generally available throughout the U.S. economy.

Generally available benefits may take myriad forms. For example, a government may distribute part of the income generated from sales of a natural resource directly to its citizens, or use such funds to provide roads, schools, hospitals or food. Alternatively, the government may provide a resource which it owns directly to its citizens at low prices or, by regulation, require that the resource be sold at low prices. The United States has frequently engaged in this type of resource distribution, for example, in selling power generated by federal dams at very low rates, in selling cheap water from government river control projects in the West, or in regulating the prices at which oil and natural gas may be sold. Few examples of greater magnitude exist than the land grant programs sponsored by the United States government during the nineteenth century.

By abandoning the requirement under GATT and our current law that countervailable domestic subsidies be sector-specific, the proposals run directly counter to the long-term interests of the United States. Since a vast array of "generally available" government economic programs can be said to benefit a country's producers, no clear line can be drawn between government action that is countervailable and government action that is not. Using the examples cited above, if generally available inexpensive natural gas is a subsidy, why not water from government irrigation projects benefiting agricultural products? Cheap hydroelectric power produced by government dams? Investment tax benefits to corporations? At the extreme, as noted by the Court of International Trade in a recent decision construing the sector-specific requirement, even public highways and bridges could be considered countervailable government benefits to their users, and "almost every import entering the stream of American commerce [could] be countervailed."2/

That such a result is not intended with respect to natural resource development was made abundantly clear in the recent Congressional debates on the extension of the contracts that would provide power generated at the Hoover Dam at prices far below market rates. Numerous defenders of the proposal -- of both parties and in both Houses of Congress -- argued that the contracts would allow the government to charge enough to recover costs and perhaps earn some profit (though certainly not the highest possible profit), and more fundamentally, that throughout United States history, the role of government in the development of this nation's resources has never been that of a profit-maximizing entity.

The bill reauthorizing below-market pricing of hydroelectric power from the Hoover Dam passed both Houses of Congress by substantial margins. The numerous statements made in support of that legislation apply with equal force to the provision of natural resources by foreign governments to their people:

> "The primary purpose of the Federal hydropower program is not to maximize revenue at taxpayer's expense but to sell power at the lowest possible rates . . . and recover the Government's investment and operating expenses." (Rep. Jerry Patterson, D-Cal.)

2/ Carlisle Tire & Rubber Co. v. United States, 564 F. Supp. 834, 838 (C.I.T. 1983).

- "[T]he whole concept of public power was one in which we said Government was not going to make a profit on the power." (Rep. Allan Swift, D-Wash.)

- "There is no subsidy involved. What is involved here is that the whole philosophy of Federal power production is that [sic] get cost recovery." (Rep. Mo Udall, D-Ariz.)

- "The Federal Government is not in the power business to make a profit -- but to stimulate private development of energy resources. The purpose of the Federal power program has never been to maximize revenue but to sell power from public projects at the lowest possible rates that will recover the Government's investment and pay all operating expenses. The projects should pay their own way -- and Hoover does." (Rep. Howard Berman, D-Calif.)

- "There is no subsidy inherent in the concept of tying the price of power to its cost of production. This is the way 98 percent of all power in America is priced." (Sen. Chic Hecht, R-Nev.)

- "[W]e ought to be pricing the power on the basis of what it costs to produce it." (Sen. James McClure, R-Idaho)

- "The Federal Government is not in the business to make a profit. . . . [I]n each of [its] investments we have done it at the lowest possible price in order to give to the people of this country . . . an opportunity to better themselves. . . .

  [The] policy which has been held in this country, in my view, for virtually all of its 200-year history . . . [is] to build this infrastructure for what it costs and to regain those costs, but not to make a profit beyond that . . . . I think it has been a good policy, it is a good policy, and will continue to be a good policy." (Sen. Daniel Evans, R-Wash.)

- "There is no need for the United States to make a profit from federal hydropower resources. . . .

  Clearly the arguments for market pricing are specious. It is against the public interest." (Sen. Barry Goldwater, R-Ariz.)

- "While some will argue that we should not be selling Federal power at below-market rates, the primary purpose of the Federal power program is not to maximize the Government's revenues but to sell power from public projects at the lowest possible rates to consumers that will recover the Government's investment and pay the operating expenses." (Sen. Dennis DeConcini, D-Ariz.)

In short, the regulation and development of a nation's natural resources have long been recognized by the United States as falling within the legitimate scope of government activities, as to which countervailing duties do not apply. No compelling argument has been advanced to alter this view.

C. The Proposals Have Serious Anticompetitive Consequences and Will Strengthen the Market Power of Cartels

Some of the natural resource proposals provide an exception to countervailability in the event the foreign nation permits United States producer access to the low-priced resource (again revealing the importance of the access issue to the natural resource proposals). But where such access is denied -- whether for political or other reasons -- that nation can comply with the proposal only if it raises its internal price of the resource to so-called "world market" levels. In already cartelized markets for certain natural resources, serious economic repercussions would arise from such a pricing measure.

As a matter of economic policy, the lowering of world prices of natural resources more accurately to reflect costs of production should be sought. Instead, however, the natural resource proposals would directly counter this type of positive economic activity. In utilizing "fair market value" to determine the extent to which the internal price of the resource is subsidized, these proposals essentially mandate the use of cartel prices, whenever a cartel exists, as the benchmark against which the subsidy is to be calculated. Undercutting the cartel price is penalized; reinforcing the cartel price is accomplished. This latter point is particularly disturbing when one considers that U.S. law would effectively extend a cartel's price discipline to countries not currently a member of the cartel. A more irrational result -- the legitimizing of inflated world market prices for natural resources -- could hardly be imagined.

The natural resource proposals would not merely lead to a lessening of competition in the natural resource itself, but also would have an obvious and direct adverse impact on American businesses and consumers. Using natural gas as an example, compliance with the proposals would force the prices of imported energy-intensive products -- such as ammonia -- to rise. The result could well be higher food prices for American consumers. So, too, the prices of imported cement to U.S. industries would rise, further escalating already high costs of construction. While these are but two of innumerable examples, it is clear that the natural resource subsidy proposals have serious commercial implications both at the level of the natural resource and at the level of the downstream product.

D. The Proposals Will Adversely Affect Foreign and Domestic Trade

Enactment of the natural resource proposals could significantly impede or disrupt United States trade. Disruption would occur not only because of the potential retaliatory actions that other countries might take in response to such legislation, but also because of the effect that these proposals would have on existing purchaser/seller relationships.

Retaliation against United States exports would be likely. As noted earlier, the United States countervailing duty law provides for a general availability test in determining whether a particular domestic subsidy is countervailable.

Article 11(3) of the GATT Subsidies Code, enumerating specific examples of possible "domestic subsidies," specifies that such subsidies are those "granted with the aim of giving an advantage to certain enterprises," and are "normally granted either regionally or by sector." These references form the basis for the explicit requirement in United States law that only domestic benefits "provided to a specific enterprise or industry, or group of enterprises or industries" are countervailable.

In 1984 the Administration, after close study, concluded that in light of the sector specificity rule, the natural resource proposals considered in the 98th Congress constituted "a drastic and unilateral departure from the internationally accepted definition of a countervailable subsidy," in violation of GATT, and that enactment of such a provision "would subject the United States to a GATT challenge, which we would almost certainly lose. The result could be GATT authorization to retaliate against U.S. exports." The Administration reiterated its position last year in hearings on one of the natural resource proposals (H.R. 2451, introduced by Congressman Gibbons) before the Trade Subcommittee. Likely targets for retaliation would be our own major exports, such as agricultural and textile products. Even if the natural resource proposals were to survive a GATT challenge, it would be a pyrrhic victory, for foreign governments would then have every encouragement to enact their own "mirror" legislation.

Key United States exports would become less competitive on the world market. The adverse impact of the natural resource proposals on United States exports extends far beyond GATT retaliation or the enactment of mirror legislation. Many United States industries use basic petrochemical and other natural resource-derived products imported from other nations to make more advanced products, which are then exported from the United States. American agricultural interests, petrochemical industries, and the forest products industry, to name just a few, all utilize natural resource-based products to produce downstream goods for export. If the prices of the basic products are driven up by substantial duties, the prices of the exports of the finished products will also rise, severely undermining or destroying their competitiveness in world markets. The marketplace would thus "retaliate" against United States exports, even if our trading partners did not.

The proposals would seriously jeopardize United States relations with developing countries. Finally, the natural resource proposals would hit hardest at United States trading partners in the developing world, where regulation of natural resources is frequently an essential part of long-term economic and social development. Indeed, the GATT recognizes the difficult economic situation of the developing nations, by allowing them greater commercial latitude without the threat of retaliation. And the United States for decades has repeatedly urged those nations to rely on the development of their natural resources to diversify their productive capacity, improve their financial position, and enhance the welfare of their people. Enactment of the proposed legislation would clearly undermine the substantial progress made by these countries.

United States exporting industries would also be substantial losers if duties were imposed on products from the developing world. These countries are major purchasers of United States exports: for example, some forty percent of total United States agricultural sales now go to developing countries, and these countries are the key growth market for future United States agricultural sales. It is simply not in the interest of the United States to jeopardize substantial long-term trading relationships with these countries, as would be the case were this legislation enacted.

E. The Proposals Are Virtually Unadministrable and Compliance Impossible

In addition to the anticompetitive and adverse trade-related consequences of the natural resource subsidy legislation, compliance with and predictable administration of the proposals are virtually impossible.

The proposals send a "damned if you do, damned if you don't" signal to foreign governments and producers. Under present United States law, the foreign exporting industry would run afoul of the antidumping statute if the natural resource in question was exported at a price lower than the domestic price of that resource. At the same time, however, under the natural resource proposals, such producers would also be committing an "unfair" practice if the export price of the resource were greater than the price charged in the domestic market. Indeed, such a result would obtain even if there were no exports of the resource in question; under such circumstances, a "fair market value" analysis would govern. Compliance with United States trade laws would thus be virtually impossible for affected foreign exporters, however the natural resource was priced.

The proposals are virtually impossible to embody in predictable, enforceable legislation. The proposals employ terms which are impermissibly vague or impossible to quantify. For example, they specify certain factors to be used in determining "fair market value," including "market clearing price," and "generally available" prices in "world markets." Although understandable concepts, such terms are not amenable to precise calculation. Moreover, no guidance is provided as to their relative weight, or the manner in which they are to be balanced against the domestic price of the resource. Indeed, as the International Trade Commission stated in its section 332(b) investigation of natural resource pricing, "[f]or a nation that has no current viable natural gas export market, the domestic price cannot be compared to the world natural gas price."3/ The very vagueness inherent in the concepts employed in these proposals underscores the fact that no foreign country, however it priced its resources, could be assured that its practices would comply with United States law. This unpredictability is itself a barrier to trade.

The same indefiniteness also renders unworkable reliance on the "export price," which is one factor that the proposals would consider in determining fair market value. Just as myriad internal prices may exist for a resource, so too, a broad spectrum of export prices may be available for comparison purposes. No guidance is provided, however, for adjusting those prices to reflect vastly different terms and conditions of sale.

F. An Injury Test Does Not Mitigate the Proposals' Serious Flaws

The proposals provide an injury test, according to which injury must be demonstrated by the petitioning United States industry before countervailing duties may be imposed, even though for all other purposes under the countervailing duty law the foreign nation may not be entitled to an injury test. While the provision of an injury test may mitigate a

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3/ U.S. International Trade Commission, Potential Effects of Foreign Governments' Policies of Pricing Natural Resources (Final Report on Investigation No. 332-202 Under Section 332(b) of the Tariff Act of 1930) at xv (May 1985).

proposal's impact in specific cases, it does not address and thus cannot mitigate the underlying conceptual problems that plague the proposals. Nor can the presence of an injury test resolve the practical problems with the proposals, such as their anticompetitive effects, their negative market impact on American consumers and export business, and their impossibility of administration and compliance.

II. THE PROPOSALS ARE UNNECESSARY, BECAUSE PRESENT U.S. TRADE LAW PROVIDES A REMEDY FOR THE PRACTICES ALLEGED

Enactment of a natural resource proposal is unnecessary in light of the fact that United States trade law -- specifically section 301 of the Trade Act of 1974 -- already provides a remedy for the practices complained of by proponents of the legislation. As is evident from the natural resource debate, the proposals are intended not merely to remedy alleged foreign pricing improprieties, but also to gain access for United States producers to foreign natural resources at low internal prices. The proposals demonstrate the importance of access by defining a "natural resource subsidy" to exist only where the price of the resource "is not freely available to United States producers for purchase of the input product for export to the United States." An effective natural resource remedy is thus one through which access may be achieved while, at the same time, providing for the imposition of duties or other forms of trade relief in the event access is denied.

The access and pricing issues involved in the natural resource debate are concerns that can be specifically addressed under section 301 of the Trade Act of 1974. This is not merely the view of the Coalition. It is also a view expressed by some of the chief proponents of natural resource legislation. This was made clear in numerous meetings of an industry ad hoc working group formed to study the natural resource issue. Industry proponents and opponents of natural resource legislation which participated in these working group sessions included domestic ammonia producers, an ammonia importer, and companies participating in petrochemical ventures abroad. The trade experts of these companies exhaustively studied the issue of natural resource subsidies, including an analysis of current U.S. trade laws and the applicability of those laws to the natural resource issue. The working group unanimously concluded that "Section 301 provides a potentially effective remedy to questions of natural resource pricing and access."

Some members of the working group nonetheless believed that legislation should still be sought because section 301 relief is discretionary. However, it is clear from examination of the record in section 301 proceedings that some sixty percent of section 301 cases have been successfully resolved by USTR. It is also clear that section 301 is broad enough in scope to address adequately problems of both natural resource pricing and access. Given these facts, there is no justification whatever to change fundamentally the U.S. countervailing duty law to address the natural resource issue. This is especially true in light of the grave economic and trade-related repercussions of such a change in that law.

Section 301 authorizes the President to respond, inter alia, to "unfair" or "unreasonable" trade practices of foreign governments that "burden or restrict United States commerce." Upon the filing of a petition and initiation of a proceeding, the Office of the U.S. Trade Representative may consult or negotiate with the offending country in order to achieve a bilateral resolution of the alleged violation. This

is the most typical way in which section 301 actions have been successfully resolved. To the extent such negotiations fail, the President ultimately may retaliate by imposing duties or other forms of import relief, or by taking other action which adversely affects merchandise exported to the United States from the foreign nation. The President's action may be directed against all countries on a nondiscriminatory basis, or solely against the offending nation.

Unlike the countervailing duty (and antidumping) laws, the range of unfair or unreasonable practices covered by section 301 is far more flexibly defined. The conduct that is at the core of the natural resource subsidy dispute -- the denial of equivalent access for United States producers to foreign resources, and the question of reciprocity -- falls squarely within the scope of the statutory language. That a remedy is available under section 301 is especially clear when one examines the amendments to that law that were enacted in 1984 -- amendments that make explicit the ability of the United States to attack the type of practices at issue here. For example, the law now defines the term "commerce" to include "foreign direct investment by United States persons with implication for trade in goods and services." And the definition of the term "unreasonable" has been expanded to include acts or practices that deny "market opportunities" or "opportunities for the establishment of an enterprise" by United States parties in the foreign nation. These provisions of section 301 thus have as their aim an opening of foreign investment and access opportunities for United States producers -- precisely the concerns addressed by the natural resource proposals.

In addition to its statutory language, section 301 relief is far superior to that available under the countervailing duty (or antidumping) laws. Section 301 relief can be long-term. The ultimate forms of relief available under the statute -- bilateral resolution, duties, quotas, tariff rate quotas, retaliatory action, and the like -- are far more varied than those available under any other unfair trade law. The practices of individual countries may be addressed both individually and flexibly. And the time frame for resolution of such actions in the case of non-signatories to the GATT (e.g., Mexico, Saudi Arabia, the U.S.S.R.) is, by statute, approximately one year -- substantially less than the time frame involved in countervailing duty proceedings, given the numerous opportunities for judicial review of those determinations.

It is true that in the event bilateral consultations fail to produce adequate results, the ultimate relief available under section 301 is discretionary with the President. But, in fact, some sixty percent of all actions under section 301 have been successfully resolved through bilateral consultations between USTR and the offending nation, or, on rare occasions, the imposition of other forms of relief. By contrast, in 1984 only 48 percent of antidumping and countervailing duty cases were successfully resolved. Included in the section 301 figures are actions sucessfully prosecuted against such countries as Canada on certain tax practices, Argentina on leather hides, China on certain restrictive import practices, Taiwan on rice -- countries and products or practices as to which diplomatic and political sensitivities are acute. Given the obvious applicability of section 301 to the pricing and access issues raised by proponents of the legislation, and the track record in other complex and controversial section 301 proceedings, a change of such dramatic proportions as would be involved here to the current countervailing duty law is simply unjustifiable.

北美事務協調委員會駐美國辦事處

Coordination Council for North American Affairs
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April 30, 1986

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Ways and Means
Subcommittee on Trade

Hon. Sam M. Gibbons
Chairman, Subcommittee on Trade
Committee on Ways and Means
House of Representatives
Room 2204 LHOB
Washington DC 20515

Dear Mr. Chairman:

The statement by Mr. John Cavanagh, Institute for Policy Studies, before your Subcommittee on April 11, 1986 has come to my attention. Whereas his statement is a general one, several paragraphs therein referring to the Republic of China on Taiwan specifically require clarification.

To begin with, Mr. Cavanagh cited statistics indicating the glaring disparity of wage levels between the United States and several of its trading partners including the Republic of China on Taiwan. He pointed out that "Even in Japan, ...hourly compensation levels were only 50 percent of U.S. levels." But we should always keep in mind that the developing countries to which the GSP designed to help are countries whose per capita national income levels are low. Since our current per capita national income is but a fraction of yours, our wages cannot possibly go beyond the limit of our low national income level and match yours, though desirable. Income equity perhaps is more important in term of workers' rights.

Mr. Cavanagh's comments on working conditions in "assembly plants in Taiwan" in a generalized way, is also misleading. What he called "bare subsistence wages" actually have been raised remarkably in recent years to a level higher than many other developing countries. The "twelve-hour days" are permitted only in exceptional circumstances while the eight-hour days are the norm. The "crowded dorms with no air conditioning in 100 degree heat and high humidity" most likely have electric fans (some do have air conditioning), and these dorms are normally provided free of charge. Potable water is certainly available. Recreational facilities and social activities are favorite projects of most Employees' Welfare Committees two thirds of whose membership are representatives of the unions concerned. Health and safety regulations are being improved and enforced by labor inspectors.

His comment that strikes are illegal under Martial Law is not exactly true. Strikes are explicitly permitted by the Labor Union Law. Whereas Martial Law provides that the Commander-in-chief "may" (it is by no means mandatory) prohibit strikes, etc., it is basically a security law which concerns strikes of a political nature rather than those resulted from labor disputes. As a matter of fact, no such order has ever been issued under Martial Law over the years. Strikes did happen from time to time though you may not find placard carrying picket lines. Experienced unionists know that there are smarter ways to stop production or otherwise apply pressure to the employer than picketing. Unlike under Communism, our workers do have the right not to work if they so choose.

Efforts of your Committee in soliciting views from the public on trade and workers' rights in connection with the GSP are commendable. Among the some 140 GSP beneficiary countries, the Republic of China on Taiwan proved to be the most successful in development while many others are ridden with threatening debt problems. It should be encouraged instead of unfairly attacked.

Sincerely,

Fusen Hu

Fusen Hu
Labor Officer

cc. John Cavanagh

Testimony of
The Honorable Thomas A. Daschle
Before the Ways and Means Subcommittee on Trade
Tuesday, April 15, 1986

Mr. Chairman, I appreciate the opportunity to appear before this distinguished panel today to address some of the problems and potential of American agriculture in international trade. I hope that my observations and suggestions will be useful to the Subcommittee as it drafts legislation which will deal with the growing emergency over the U.S. trade deficit.

American agriculture through the years has contributed to a trade surplus, but now finds its historic contribution to a favorable trade balance threatened. Consider the current state of agricultural trade.

-- The agricultural trade surplus, which peaked at $26.6 billion in 1981, is expected to be about $12 billion in 1985, compared with a nonagricultural trade deficit of about $160 billion.

-- The U.S. accounts for 30 to 60 percent of global exports of wheat, feed grains, and soybeans, the major U.S. agricultural commodities traded internationally.

-- USDA estimates that each dollar received from exports stimulates another $1.05 worth of business for U.S. industries.

-- Although the U.S. share of overall world trade has declined (from 18 percent in the early 1950's to 11 percent in 1980), the U.S. portion of the world's agricultural trade increased from 13 percent in the early 1950's to almost 19 percent in 1981 before dropping (to 18 percent) in 1983.

-- Although U.S. agricultural trade has declined since 1981, it has maintained 20 percent of total U.S. trade.

-- The value of U.S. agricultural exports will decline from $39.10 billion in 1982 to an estimated $28 billion in 1986.

These statistics demonstrate the economic opportunities inherent in domestic agricultural production. They also indicate the need for the Executive and Legislative branches of government to actively promote this potential.

As a member of the House Agriculture Commitee, I was pleased to work with Chairman de la Garza and my colleagues on the committee to address trade issues last year in the 1985 Farm Bill. Among the provisions of the bill was a directive to the Secretary of Agriculture, in coordination with the Special Trade Representative, to seek multilateral consultations to reduce the need for export subsidies and reduce the likelihood of a farm commodity trade war.

While I supported the efforts of the Agriculture Committee in the area of trade, I believe we need to proceed further. Your Subcommittee's efforts provide the vehicle to achieve this end.

It is important to keep in mind that the problems of family agriculture have absolutely nothing to do with productivity or efficiency or competititveness. They have nothing to do with an inability to survive on the level playing field of a truly free market.

The problems that will destroy family farming within the next few years if not remedied are largely problems created by government. They are problems made in Washington and in Tokyo and Brussels; problems resulting from an American government that has rolled over to foreign protectionism.

The National Commission on Agricultural Trade and Export Policy has made some recommendations to the subcommittee concerning the upcoming GATT negotiations. I concur with these recommendations. I particularly see the need for tighter GATT enforcement powers together with the ability of the U.S. government to retaliate against unfair trading practices directed at our country.

In the last four years, several petitions have been filed through the Office of the U.S. Trade Representative (USTR) against unfair trade practices of foreign governments involving agricultural products: wheat flour, citrus, poultry, pasta, canned fruit and raisins, tobacco, soybean oil and meal, cattle hides, rice and sugar. Since 1979, just one, a petition against EC subsidies on canned fruit, has been settled. This settlement came in November 1985 after four years of negotiation and use of the GATT dispute settlement procedures. Several other petitions have been terminated or withdrawn without being satisfactorily resolved.

I urge the Subcommittee to add teeth to the petition process. The U.S. Trade Representative should be required to take retaliatory steps to counter the economic impact of unfair trade practices within 15 to 18 months of the filing of a Section 301 petition, except upon: (1) determination by USTR that action with respect to the petition is unwarranted; (2) determination by appropriate and binding GATT mechanisms that the U.S. position is unsubstantiated; or (3) agreement by the offending country to eliminate such practice.

In addition, USTR should be required to self-initiate Section 301 cases upon evidence of unfair trade practices and without petition of affected domestic industries. Enhanced unfair trade monitoring capabilities should be provided to USTR or to another appropriate agency to ensure that all unfair trade practices and export subsidies are subject to redress under Section 301.

All American agriculture asks is to compete in international trade on a level playing field. The mandatory Gatt provisions of the Trade Emergency and Export Promotion Act will help introduce greater equity in our bi-lateral trade relationships.

In addition to stricter enforcement of GATT, I hope the Subcommittee will address several specific examples of discrimination against US agricultural products and require more effective agricultural import monitoring and analysis. I would like to take this opportunity to offer several specific recommendations for the Subcommittee's consideration.

Pork Amendment

I would first like to address the problem of imports of processed as opposed to unprocessed agricultural products. We need to clarify the original intent of Congress concerning the application of antidumping and countervailing duty statutes to agricultural products in varying stages.

I have joined with Representative Richard Gephardt in proposing an amendment which would allow U.S. swine producers to bring countervailing duties and antidumping complaints to the ITC on processed pork products. In considering their petitions, the ITC would be required to consider hog raising and pork packing as a whole industry and assess the impact of a rise in import duties on prices of either the raw or the processed product.

This amendment came about as a consequence of a controversial ITC countervailing duty decision regarding live swine and fresh, chilled or frozen pork imports from Canada. The ITC chose to very narrowly define "domestic industry."

On July 25, 1986, the ITC determined that imports of live swine were injuring the U.S. swine industry and imposed a countervailing duty. It also determined that imports of fresh,

frozen, and chilled pork were not injuring the domestic pork packing industry because data showed there was only a low level of import penetration of Canadian pork into the U.S. pork packing industry, that imports caused the loss of only one domestic sale, and that pork prices rose in general at the same time that the imports from Canada were increasing. The Commission made a final determination that there was no threat of material injury to the domestic U.S. pork packing industry because there was no evidence that Canadian production capacity had increased. Pork producers were excluded from consideration as affected parties because they are not part of the ITC's definition of what constituted the "processed pork industry."

This proposed legislation could change the way in which the ITC examines data on imports of agricultural products in the future. There is legal precedent for parts of this proposed change. The Trade and Tariff Act of 1984 (P.L. 98-5731) requires that grape growers be considered part of the wine industry for the purposes of bringing a countervailing duty complaint. Commodity producers (farmers) could now petition for protection against imports of processed products under the new definition of like industry if they can show that there is substantial coincidence of economic interest between themselves and the processors of the product. If the countervailing duty investigation showed there was an impact on raw material prices from imports, a countervailing duty would be levied.

Import Monitoring

While import statistics are maintained on a continual basis, it appears that domestic production and consumption data that corresponds with import data is not maintained. It is thus virtually impossible to analyze the impact agricultural imports are having on the U.S. agricultural sector as a whole.

In an effort to answer the question: "To what extent are the levels of imports causing injury to U.S. farmers or to U.S. agriculturally-related industries?", a lead federal agency should be designated to analyze all available data.

I recommend that the U.S. Department of Agriculture be assigned responsibility for the Federal monitoring of agricultural imports (both raw and processed) and for relating this import data to domestic production and consumption data. In this role, the U.S. Department of Agriculture would coordinate other executive agencies, such as the U.S. Department of Commerce, to make the system compatible throughout the Government.

The Department of Commerce and USDA should be required to convert historical and current domestic production and consumption data so that it would correspond to already existing import statistics.

As the lead agency, the Department of Agriculture should be especially mindful of the new role of value-added imports. Although the U.S. is a dominant supplier of bulk commodities (e.g., feed grains, oilseeds, etc.) to the world market, the U.S. has not achieved a similar position in exporting value-added food products. While world trade in value-added products (e.g., flour, oilseed meal, meats, dairy products, fruits and vegetables) has increased significantly, the U.S. has failed to capture more than 10% of any high value market.

According to the United Nations Calendar Year Trade Date, the greatest proportion of agricultural imports entering the United States in the late 1960s were primarily low-value (usually raw, unprocessed products), as opposed to value-added/high value commodities (products which have been processed, thereby increasing the value, or products that have inherently high values such as meats, vegetables, fruits). In 1964, 62% of total

amount of U.S. agricultural imports were low-valued products. From 1964 to 1970, this percentage declined to 48.7%. In 1970, more than 51% of agricultural imports were in the value-added/high-value category. By 1983, 64% of U.S. agricultural imports were comprised of value-added/high-valued imports.

The lead monitoring agency, USDA, should be required to file an annual report with the assistance of other relevant agencies, including the USTR and Commerce. The report should contain not only (1) correlation data, relating import data to domestic production and consumption data, but also (2) specific information on low-value as opposed to high value imports and exports.

Product Standards

Besides a growing concern over our lack of competitiveness in the agricultural high value market, there is also a growing concern over equivalence in product standards from country to country.

For instance, farm state representatives have been receiving complaints from farmers who see grain leave their farms in good condition and then learn that export elevators have subsequently added dust and other material to the grain to increase profits. There is legitimate concern that such practices reduce U.S. competitiveness in foreign markets, particularly when considering that some competitors -- notably Canada -- have stricter standards for grain exports than does the United States.

In addition, cattlemen are concerned about achieving some equivalence in product standards, so that package labeling, product quality and safety inspection, etc. are consistent from country to country.

The concerns of the cattlemen and the grain producer are related. There is a need to obtain some equivalence in product standards, so that package labeling, product quality and safety inspection, etc. are consistent from country to country.

I recommend that the GATT negotiators be instructed to explore the possibilities of obtaining equivalency.

Ethanol

On February 5, 1986, this Subcommittee heard testimony on the existence of loopholes in United States trade law which allow certain ethanol imports to evade the U.S. import duties normally levied against such products. These loopholes contradict existing short-term tax incentives to encourage the production and use of fuel ethanol from renewable resources and threaten the viability of the emerging domestic fuel ethanol industry.

As a representative of a farm state, I am especially familiar with the potential which fuel ethanol holds for American agriculture. American farmers, caught in the vise of declining prices and restrictive credit, need new markets for their product. American agriculture is the most productive sector of our economy. We should be encouraging new outlets for their production, not undercutting them.

Item 901.50 of the Tariff Schedules of the U.S. (TSUS) imposes a 60 cents per gallon duty on imports of anhydrous fuel ethanol. Certain marketers and traders are utilizing at least three loopholes in trade law to circumvent this duty -- the importation of fuel grade ethanol as industrial ethanol; the importation of ethanol mixed with gasoline or other compounds; and the importation of fuel-grade ethanol from non-Caribbean Basin countries under the terms of the Caribbean Basin Economic Recovery Act. These imports, which are certain to escalate without corrective action by Congress, not only unfairly impair the growth of the domestic fuel ethanol industry, they also cost the U.S. Treasury millions of dollars in foregone revenues.

I will not repeat the more detailed testimony I presented to the Subcommittee on this subject on February 5. However, I do urge that the Subcommittee address these loopholes by subjecting all imported ethyl alcohol to the 60-cent duty at then point of entry into the U.S.; by requiring that the existing 60 cent duty on ethanol imported as a fuel or for, fuel purposes also apply to ethanol imported as a mixture with gasoline and other compounds; and by clarifying the eligibility criteria for the imporation of ethanol into the U.S. duty-free under the CBI statute. By closing these loopholes, the Subcommittee will support the intent of Congress when it established the tariffs on imported ethanol for blending with fuel and the original intent of Congress when it established the Caribbean Basin Initiative to enhance economic development in that region.

Mr. Chairman, there is no "quick fix" for the problem of declining United States farm exports. The actions required to level our playing field and unleash the tremendous productive potential of American farmers are numerous as they are complex.

The proposals I have made today, like the actions taken in last year's Farm Bill, are not magic pills for farm exports. Together, though, they will make an important difference. They and even further steps must be carefully crafted and vigorously pursued.

And each of these steps, Mr. Chairman, must be pointed down a single, critical path from which we have strayed too often. That path is fairness.

It is a level path, not one tilted uphill for the American farmer who seeks to send his product abroad. It is an honest path, not one open to subsidized or tainted imports while blocked by artificial barriers erected against American products.

American agriculture deserves a trade policy and an Administration committed to fairness. It deserves a policy as tough in its demands that Americans be treated fairly as it is clear in its willingness to trade freely where that trade is fair.

Those are the goals of the proposals I have made today. They must also be the goals of the Subcommittee, of this Congress and of our government.

Thank you.

TESTIMONY OF HONORABLE BRIAN DONNELLY
WAYS AND MEANS SUBCOMMITTEE ON TRADE

MR. CHAIRMAN, THANK YOU FOR THE OPPORTUNITY TO SUBMIT MY TESTIMONY TO THE TRADE SUBCOMMITTEE. I COMMEND YOU FOR HOLDING THIS COMPREHENSIVE SERIES OF TRADE REFORM HEARINGS, AND I LOOK FORWARD TO WORKING WITH YOU TO DEVELOP COMPREHENSIVE TRADE LEGISLATION IN THE COMING WEEKS.

MY TESTIMONY TODAY FOCUSES ON LEGISLATION I INTRODUCED IN THE LAST SECTION OF CONGRESS, H.R. 2607, THE FAIR FOREIGN TRADE PRACTICES ACT. I AM PLEASED THAT MANY OF THE PROVISIONS OF H.R. 2607 ARE INCLUDED IN THE TRADE REFORM DISCUSSION DRAFT YOU CIRCULATED ON MARCH 18. I HOPE, HOWEVER, THAT THE COMMITTEE DRAFT WILL BE USED PRIMARILY AS A STARTING POINT, AND THAT ALL PROVISIONS H.R. 2607 WILL BE INCLUDED IN THE LEGISLATION IT REPORTS.

WHILE THE RECENT DECLINE OF THE DOLLAR AGAINST THE CURRENCIES OF THE MAJOR INDUSTRIALIZED NATIONS IS ENCOURAGING, I HAVE NO ILLUSION THAT IT IS A PERMANENT SOLUTION TO OUR TRADE IMBALANCE. ADHERENCE TO A POLICY OF "FREE TRADE" CAN NEVER BE REALISTIC WHILE COUNTRIES ALL OVER THE WORLD ENGAGE IN UNFAIR TRADE PRACTICES . AS A RESULT OF THESE COUNTRIES' POLICIES, MANY MARKETS ARE EFFECTIVELY CLOSED TO UNITED STATES PRODUCTS. IN OTHER COUNTRIES, IT IS EXTREMELY DIFFICULT FOR AMERICAN COMPANIES TO SELL THEIR PRODUCTS. FURTHER, COUNTRIES WHICH ENGAGE IN EXPORT TARGETING GIVE THEIR PRODUCTS AN UNFAIR ADVANTAGE IN THE OPEN U.S. MARKETS.

H.R. 2607 PROPOSES A SERIES OF MEASURES TO STREAMLINE SECTION 301 OF THE 1974 TRADE ACT, AND STRENGTHEN ITS ENFORCEMENT MECHANISMS. SECTION 301 IS DESIGNED TO PROTECT UNITED STATES COMPANIES FROM FOREIGN COUNTRIES' UNFAIR TRADE PRACTICES. DESPITE ITS BROAD SCOPE, SECTION 301 IS SELDOM UTILIZED. IMPROVING SECTION 301, TO MAKE IT A MORE EFFICIENT AND EFFECTIVE TOOL FOR U.S. INDUSTRY, SHOULD BE A TOP PRIORITY IN DEVELOPING TRADE LEGISLATION. THE IMPROVEMENTS ENUMERATED IN H.R. 2607 ARE PARTICULARLY APPROPRIATE BECAUSE THEY AVOID THE TYPE OF SWEEPING, ACROSS-THE BOARD RESTRICTIONS THAT ARE BOUND TO PROVOKE COUNTER-MEASURES FROM OTHER NATIONS. BY IMPROVING EXISTING

LAW DESIGNED TO OPEN FOREIGN MARKETS AND PROVIDING REMEDIES FOR EXPORT TARGETING , H.R. 2607 PROVIDES A MODERATE, REASONABLE SOLUTION TO A MAJOR CAUSE OF THE TRADE DEFICIT IN A WAY THAT CONFORMS TO THE REQUIREMENTS OF GATT.

SECTON 301 OF THE 1974 TRADE ACT IS SELDOM USED BY U.S. INDUSTRY FOR SEVERAL REASONS. SINCE THE USE OF SECTION 301 IS DISCRETIONARY, AND RESPONSIBILITY FOR USING IT LIES ENTIRELY WITH THE PRESIDENT, IT IS SUSCEPTIBLE TO TREMENDOUS POLITICAL AND DIPLOMATIC PRESSURES. THUS, AN INDUSTRY FILING A SECTION 301 PETITION HAS NO ASSURANCE THAT ANY FORM OF RELIEF WILL ACTUALLY RESULT. FURTHER, PROCEEDINGS CAN BE EXTREMELY LENGTHY, ABSORBING TREMENDOUS AMOUNTS OF A PETITIONER'S TIME AND ENERGY.

H.R. 2607 ADDRESSES THE SHORTCOMINGS OF SECTION 301 IN SEVERAL WAYS. FIRST, IT GIVES THE UNITED STATES TRADE REPRESENTATIVE ALL SECTION 301 AUTHORITY. ONCE THE USTR DETERMINES THAT A RESPONSE IS APPROPRIATE, H.R. 2607 MANDATES THAT HE TAKE ACTION, WHICH MAY INCLUDE ECONOMIC SANCTIONS AGAINST THE OFFENDING NATION. THE PRESIDENT RETAINS THE AUTHORITY TO PROHIBIT IMPLEMENTATION OF ANY ACTION BY DISAPPROVING THE USTR'S PROPOSED ACTION WITHIN 60 DAYS, AND BY SUBMITTING HIS REASONS FOR DISAPPROVAL TO CONGRESS. I BELIEVE THIS IS A NECESSARY REFORM; THE USTR WILL NOT BE SUBJECT TO THE SAME DOMESTIC AND INTERNATIONAL POLITICAL PRESSURES THAT WEIGH ON THE PRESIDENTS DECISION-MAKING, AND THEREFORE WILL BE IN A BETTER POSITION TO ASSIST U.S. INDUSTRIES. REQUIRING THE PRESIDENT TO PUBLICLY DISAPPROVE THE USTR'S PROPOSED ACTION, MOREOVER, MAKES HIM BEAR THE RESPONSIBILITY FOR A DECISION FROM WHICH CURRENT LAW EFFECTIVELY ISOLATES HIM.

H.R. 2607 ADDS "INJURIOUS INDUSTRIAL TARGETING" TO THE LIST OF SITUATIONS FOR WHICH ACTION BY THE UNITED STATES IS APPROPRIATE. I AM PLEASED THAT THE SUBCOMMITTEE DRAFT REQUIRES MANDATORY ACTION AGAINST EXPORT TARGETING.

H.R. 2607 CORRECTS ONE OF THE MOST SERIOUS SHORTCOMINGS OF SECTION 301 PROCEDURE BY IMPOSING STRINGENT TIME LIMITS ON EVERY STEP OF THE PROCESS. UNDER THESE TIME LIMITS, NO MORE THAN SEVEN MONTHS WILL PASS BEFORE A DETERMINATION IS MADE AND ACTION IS

IMPLEMENTED. THE USTR IS REQUIRED TO MAKE A SECTION 301 DETERMINATION WITHIN 120 DAYS AFTER THE INITIATION OF THE INVESTIGATION. IF HE DETERMINES THAT ACTION IS APPROPRIATE, HE MUST INITIATE THE SPECIFIC ACTION TO BE TAKEN WITHIN 30 DAYS OF THAT DETERMINATION. DURING THE 60 DAYS SUBSEQUENT TO THE USTR'S DECISION THE PRESIDENT MAY DISAPPROVE THE ACTION CONTEMPLATED. IN EACH INSTANCE OF PRESIDENTIAL DISAPPROVAL, THE PRESIDENT MUST SUBMIT HIS REASONS FOR DISAPPROVAL TO THE CONGRESS WITHIN 15 DAYS. STRICT TIME LIMITS OF THIS TYPE SHOULD BE INCLUDED IN THE COMMITTEE'S BILL TO ENSURE THAT SECTION 301 RELIEF WILL BE AFFORDED IN A TIMELY MANNER.

THE USTR, UNDER H.R. 2607, MUST TAKE SPECIFIC ACTION: EITHER SUSPEND TRADE AGREEMENT BENEFITS TO THE OFFENDING NATION: IMPOSE DUTIES OR OTHER IMPORT RESTRICTIONS ON THE PRODUCTS OF THE OFFENDING NATION: NEGOTIATE AN AGREEMENT TO ELIMINATE THE BURDEN ON THE U.S. COMMERCE OF THE OFFENDING PRACTICE: PROPOSE EXECUTIVE ACTION OR LEGISLATIVE CHANGES: OR A COMBINATION OF SUCHACTIONS. I URGE THE COMMITTEE TO INCLUDE PROVISIONS FOR SPECIFIC ACTION SO THAT OUR TRADING PARTNERS WILL KNOW EXACTLY WHAT CONSEQUENCES THEY FACE WHEN THEY ENGAGE IN UNFAIR TRADE PRACTICES.

FURTHER, MY LEGISLATION ADDS PROVISIONS FOR CONSULTATION WITH PRIVATE SECTOR REPRESENTATIVES THROUGHOUT THE 301 PROCESS, EMPOWERS THE USTR TO OBTAIN INFORMATION FROM OTHER FEDERAL AGENCIES, AND PROVIDES THE USTR AN INVESTIGATIVE STAFF TO ENABLE HIM TO CARRY OUT HIS SECTION 301 RESPONSIBILITIES.

I HOPE THE COMMITTEE WILL CONSIDER INCLUDING THE PROVISIONS OF H.R. 2607 TO IMPROVE SECTION 301 IN ITS BILL. THANK YOU FOR THE OPPORTUNITY TO PRESENT MY TESTIMONY.

COMMENTS OF THE
FEDERATION OF THE SWISS WATCH INDUSTRY
ON TRADE POLICY REFORM LEGISLATION
BEFORE THE SUBCOMMITTEE ON TRADE OF THE
COMMITTEE ON WAYS AND MEANS OF THE
UNITED STATES HOUSE OF REPRESENTATIVES

The Federation of the Swiss Watch Industry applauds the efforts of the Subcommittee on Trade to put a halt to commercial counterfeiting and submits the following comments concerning sections 161 and 162 of the Discussion Draft of the Comprehensive Trade Policy Reform Act of 1986. These provisions, amend Section 337 of the Tariff Act of 1930 to make, inter alia, the importation of counterfeit goods an unfair method of competition.

Headquartered in Bienne, Switzerland, the Federation of the Swiss Watch Industry is composed of watch companies and trade associations which in the aggregate represent virtually all Swiss producers of watches, watch movements and watch parts. Although it has not been the practice of the Federation to participate in the U.S. legislative process, the Federation has felt it necessary to submit these comments because of the importance of this legislation to the effort to combat the widespread practice of commercial counterfeiting, particularly of watches.

Over the past two decades, the Federation has played an increasingly active role in detecting and combatting the counterfeiting of watches worldwide. Watches are particularly vulnerable to counterfeiting due to the significance the public places on watch brand names and the ease with which inferior watch parts and movements may be hidden from the consumer within the watch. As a result, the Federation maintains and operates its own anti-counterfeiting monitoring and investigative service in order to protect the watch-purchasing public.

The United States is the largest single market for Swiss watches. Counterfeiting of Swiss watches is widespread throughout the United States, and the majority of these counterfeits are imported into this country from abroad. Consequently, the strengthening of existing trade legislation

which would facilitate legal action against counterfeiting would be in the best interest of the industry, the U.S. importers and the consumers.

Sections 161 of the Discussion Draft would expand Section 337 of the Tariff Act to make the counterfeiting of goods of a U.S. industry an unfair method of competition. Section 162 of the draft imposes criminal penalties for the sale or transportation of counterfeit goods.

While the Federation believes that the Subcommittee on Trade has demonstrated a constructive approach to expanding anti-counterfeiting efforts through the inclusion of these provisions in the draft, it is concerned that the legislation retains the necessity of proving injury to a U.S. industry before an unfair trade practice can be found.

Section 161 states in part that an unfair method of competition may be found if the importation of counterfeit goods has the tendency or effect "to destroy or substantially injure an industry, efficiently and economically operated, in the United States." While watch importing may very well constitute a U.S. industry, the injury requirement imposes an unnecessary and burdensome precondition to relief. In the Federation's view, it should be sufficient that a company with a U.S.-registered trademark merely demonstrate that its product has been counterfeited by imports in order to be entitled to relief.

In this regard, the White House recently proposed legislation entitled the "Intellectual Property Rights Improvement Act of 1986" which would eliminate, in trademark counterfeiting cases under Section 337 of the Tariff Act, the injury requirement and the requirement of the existence of an efficiently and economically operated U.S. industry as a precondition for relief. Under the Administration's bill, the import or sale of any article which infringes a valid and enforceable U.S. registered trademark -- regardless of the country of the injured industry -- would constitute an unfair

method of competition. This legislative provision would ease considerably the burden of establishing a violation.

In addition, as the Subcommittee is aware, many products enter the United States in a form (trade dress) which makes it readily apparent that they will soon become counterfeits. For example, a watch of the Rolex design or Scotch whiskey in a distinctive pinch bottle, although lacking the trademark of the true manufacturer, are clearly destined to become counterfeits. The objective of this Discussion Draft would be enhanced if broadened beyond trademarks to include the importation of infringing trade dress.

As an additional effort to halt counterfeiting the Discussion Draft contains criminal penalties as a further deterant. The Federation urges the Subcommittee to retain these sanctions, but to expand the scope of protection as outlined in the Draft to include all goods with U.S.-registered trademarks.

The Federation sincerely hopes that these comments will be helpful to the Subcommittee's efforts in formulating its final legislation in this important area.

Respectfully submitted,

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STATEMENT OF THE FERTILIZER INSTITUTE

The Fertilizer Institute is a non-profit trade association of the fertilizer industry and represents, by voluntary membership, more than 90 percent of the nation's fertilizer industry. Producers, manufacturers, retailers, trading firms, and equipment manufacturers who comprise its membership are served by a full-time Washington, D.C., staff in various legislative, educational and technical areas, as well as with information and public relations programs.

Although the Administration has identified non-tariff barriers for priority in the next round of Multilateral Trade Negotiations (MTN), there should be substantial efforts to reduce tariffs on U.S. exports for those products entering the U.S. duty free. In this connection, tariff reductions on an individual industry basis, or on a sectorial basis, would be much more effective than resorting to a formula cut basis.

Importance of Exports

The United States fertilizer industry generates sales of approximately $8-9 billion per year, about 40% of which is in exports. The industry supports a large employment base within the U.S., and impacts many sectors of the U.S. economy, including the consumer food supply. The industry is currently very concerned about unfair trade practices, import quotas, and import duties, all of which take a financial toll on U.S. exporters and threaten the future health of fertilizer manufacturers in the U.S.

The U.S. industry exported fertilizers with a total value of $3.1 billion at U.S. port in the twelve months ending June 30, 1985. Fertilizer exports from the U.S. grew rapidly in the 1970's, doubling between 1975 and 1980. Exports for the year ending June 30, 1981, were at record levels for U.S. producers. During that year, products valued at $3.2 billion were exported, including more

than one billion dollars worth of ammonium phosphates. Tonnage of finished fertilizers exported in 1981 were 30 million, with 14 million tons of phosphate rock. Total export value dropped in 1982 and 1983 due primarily to world economic conditions. A modest recovery began in 1984 and continued into 1985, when total value again exceeded $3 billion.

Ammonium phosphate, which is an important fertilizer intermediate, and phosphate rock are the largest dollar volume fertilizer products exported. The capacity to export phosphate rock, which is an important fertilizer raw material, was developed first, using the abundant reserves in the state of Florida. Later, as more upgrading capacity became available, the industry shifted more to exporting of value-added products in the form of ammonium phosphates and other phosphate fertilizer products.

The export value of diammonium phosphate, the most popular ammonium phosphate product, reached one billion dollars in 1981 and has stayed near that level in each year since. The record year for exports of diammonium phosphate was 1985, with a total export value of $1.3 billion. Other individual products, including phosphoric acid, nitrogen fertilizers such as anhydrous ammonia and urea, and potassium chloride provided smaller but significant contributions to the total export value.

TABLE I

U.S. Fertilizer Exports
Year Ending June 30, 1985

Product	Value of Exports $ millions
Diammonium Phosphate	1,277.3
Phosphate Rock	370.1
Urea	208.1
Concentrated Superphosphate	185.4
All Products	3,079.0

Country	Value of Exports $ millions
India	450.6
China	275.2
Canada	263.0
Belgium-Luxembourg	224.2
USSR	208.9
World Total	3,079.0

The U.S. is a world leader in both production and consumption of fertilizers. In 1985, approximately 35 million metric tons of fertilizer phosphate expressed as P_2O_5 were produced worldwide, and 34 million were consumed. Of these totals, the U.S. produced 23 percent and consumed 12 percent. In the same year (1985), approximately 75 million tons of nitrogen (N) were produced and 70 million consumed in the world, with the U.S. producing 17 percent and consuming 15 percent of these totals. The U.S. also contributes to the world's needs for potash, which is the third major plant nutrient, producing 5 percent and consuming 19 percent of the world totals in 1985.

When we consider that the U.S. industry represents up to 25 percent of the total world potential for production and consumption of key fertilizer products, the industry's concern over unfair trade practices and other barriers to efficient allocation of the world's resources becomes clear. If we assume that only fertilizer production which is in excess of a country's domestic consumption needs is available for export, the U.S. industry represented 44 percent of world export potential in 1985. Despite the dependence of many countries on plant food exports from the U.S., the industry is now subject to a variety of problems in international trade.

Cost of Tariffs to the U.S.

Import tariffs charged in fertilizer products exported from the U.S. are costing the U.S. industry $150-200 million per year, based on calculations using published tariff tables provided by the U.S. Department of Commerce (USDC). The import tariffs, which represent cost, or lost value, to U.S. fertilizer producers, range from 4 percent to 100 percent of declared value including freight, depending on the product.

TABLE II

Country	Range of Tariffs (percent)	Calculated Tariff Cost to U.S. Exporters FY '85 ($ million)
EC	4 - 13	16.6
Far East		
Pakistan	6 - 85	37.5
South Korea	5 - 25	19.5
India	0 - 60	10.2
Taiwan	5 - 25	7.1
Philippines	10 - 20	2.3
South America		
Brazil	10 - 80	20.5
Chile	20	6.2
Venezuela	1 - 100	3.4
Mexico	40	3.0
World Total (includes countries not listed above)		148.9

The U.S. does not impose import tariffs on fertilizer products from any country and has not since 1922. Many countries which impose heavy tariffs on fertilizer imports from the U.S. enjoy duty-free access to markets in the U.S. Fertilizer producers in these countries, often operating with direct or indirect government subsidies, are free to compete with U.S. producers for U.S. domestic markets, while penalizing U.S. product entering their own borders.

In addition to tariff barriers on fertilizer imports, which tend to eliminate trade potential in some regions, the U.S. industry also is subject to a variety of non-tariff barriers.

These non-tariff barriers to free trade include import quotas and product specification requirements.

Product specifications are being used increasingly as an impediment to free trade and as a potential tool for discrimination against U.S. producers. A recent well-publicized case against the European Community (EC) demonstrated that requirements for water solubility in concentrated superphosphate being imported into the EC could be used to discriminate against American product in favor of North African material. Other product standards, such as those for chlorine and biuret content, have been used in a discriminatory manner.

Import quotas also impede fertilizer trade. A recent quota on imports of ammonium phosphates into the EC was imposed as a retaliation to something totally unrelated to fertilizer trade, and yet will result in about 30-35 percent reduction in imports of these products to that region from the U.S.

Summary

The United States has not imposed tariffs on fertilizer imports since 1922; fertilizers from any source are imported duty free. And yet, as a large volume shipper of phosphate and nitrogen fertilizers, we are subject to large import tariffs on products we export. The United States in its trade negotiations, should insist on reciprocity in trade practices. If the export products of a country enter the U.S. duty free, that country should permit U.S. products to enter duty free also.

The Fertilizer Institute respectfully requests that legislation for the next MTN include the following requirements for U.S. trade negotiations:

> U.S. trade negotiators should seek reduction of tariffs on a product-by-product basis rather than using a formula applied broadly to all products. Additionally, the U.S. will insist on a priority for reduction or elimination of tariffs for groups of products entering the U.S. duty free but which face tariffs imposed by other importing countries.

STATEMENT

OF

FOOTWEAR RETAILERS OF AMERICA

This statement is submitted on behalf of the Footwear Retailers of America ("FRA") (formerly the Volume Footwear Retailers of America) in opposition to the Section 201 amendments in the discussion draft bill relating to the transfer of authority from the President to the United States Trade Representative (USTR), mandatory import restrictions, and the auctioning of import quotas.

FRA is an association of chain shoe stores whose members retail half of all footwear sold annually in the United States and who provide 150,000 U.S jobs. A list of FRA members, who sell primarily low priced shoes to low and middle income customers, is attached.

Overview. FRA believes that the proposed amendments to Section 201 are intended to respond to two concerns: domestic industry reaction to the President's failure to provide import relief in two recent cases* and the desire to keep quota rents out of the pockets of foreign interests.

The bill's response is a realignment of Section 201 away from its purpose as a mechanism for promoting industry adjustment to import competition. Instead, the bill would convert Section 201 into an automatic import relief statute without regard to whether such relief furthers adjustment or is in the national economic interest.

Under the bill if the ITC finds injury and approves an adjustment plan, it must recommend import restrictions; it cannot recommend adjustment assistance alone. The USTR, upon receipt of such a recommendation, must impose import restrictions — even if restrictions will not promote adjustment, will cause a greater loss than gain in U.S. jobs or will have a negative impact on the national economic interest.

Because adjustment assistance is the only appropriate response to promote adjustment in specific cases, the bill, as in current law, should provide the ITC with the choice of adjustment assistance with or without import relief. It should also allow the President, as present law does, to implement adjustment assistance without import restrictions, when to do otherwise would not be in the national economic interest.

The transfer of quota rents to restricted foreign suppliers is a legitimate concern. It is an inherent problem in administering quantitative restrictions. While the auctioning of quotas may reduce the windfall to foreign producers in certain cases, we believe that the cure is worse than the disease and urge that the provision be deleted.

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*In both of the recent Section 201 cases, the President decided that the benefits of import restrictions for a particular industry were outweighed by the harm to the national economic interest. In the copper industry case, the President decided against import restrictions because he concluded that more jobs would be lost than created if relief were granted. In the footwear decision, the President concluded that import restrictions would not further industry adjustment and would impose too great a cost on consumers.

I. FRA's OPPOSITION TO QUOTAS AND AUCTIONS

FRA has a vital interest in the outcome of these amendments. The footwear industry operated with temporary quotas from 1977 through 1981. Based on this experience, we oppose new import quotas on shoes, which we believe would be a disaster for consumers, hurt our business, and have no salutatory long-term impact on U.S. shoe production. Enactment of these amendments will all but assure that these harmful results will occur.

Auctions as the sole means of distributing import quotas on shoes would compound the harm of quantitative restrictions to consumers and our businesses. Auctioning of all quotas would make low income consumers their principle victims, because higher priced items could bear larger auction premiums than low priced goods.

FRA, and the consumers they serve, are totally dependent on foreign sources for many key categories of footwear, especially the fastest growing segments, athletic and low price shoes — the bulk of all imports. As the earlier quota regime demonstrated, U.S. producers cannot replace the imports lost to quotas.

Our goal is to sell the highest volume of low priced, quality shoes to our cost-conscious low and middle income customers. FRA members directly import the bulk of all low priced shoe imports, selling those products to the consumer. Intense retail competition is a relentless check on raising prices.

In spite of this, import quotas would drive up prices, especially on shoes than cannot be obtained in the U.S. and result in a scarcity of shoes Americans want and can afford. The footwear quotas in the textile bill would raise shoe prices by some $21 billion over eight years.

The major footwear retailers have national chains with hundreds, some with thousands, of outlets, providing extensive employment — more than 150,000 employees in our group alone. Protecting these investments is a vital priority. Predictability of supply and price is essential to our operations.

Finally, despite heavy import penetration, U.S. shoe production remains a profitable business. It could not, however, utilize import protection to expand production into those segments of the footwear market dominated by imports, which have gained market share by producing labor-intensive products at lower wage rates. Also, U.S. shoemaking firms are heavy importers today and, with their domestic output, dominate total U.S. shoe sales.

II. QUOTA AUCTIONS IN ALL CASES IS BAD POLICY

A. Overview

In testifying before the Trade Subcommittee on April 9, 1986 Ambassador Yeutter remarked with respect to the bill's provision's which would require the auctioning of import quotas:

> "Mr. Chairman, this proposal may be an economist's dream, but it could be a bureaucratic nightmare, and it would raise serious concerns regarding our international obligations. Section 1102 of the Trade Agreements Act of 1979 already gives us the authority to auction import licenses, but every time we have considered doing so we have concluded the costs far outweigh the benefits."

We agree with Ambassador Yeutter.

The experience of the Administration in evaluating the public auctioning of quotas is compelling testimony that the auction approach, while a well intentioned means of depriving foreign producers of quota gains, is simply too cumbersome and too costly to be practical in most cases. This is particularly so when the alternative means of keeping any scarcity gain in the U.S. — tariffs — can be achieved without administrative complications.

As a matter of sound government policy, we, like Ambassador Yeutter, question the wisdom of mandatory auctions for all quota in all cases of quantitative limits on imports (except where "impracticable"). Comprehensive quota auctions are a novel idea, the consequences of which in the real world are unknown. Just how "practicable" any all-inclusive auction would ever be is open to debate. Theorizing by economists on how they would work is scant comfort to retailers whose huge investments in stores and personnel would be constantly at risk depending on the whim of a bidding process.

We are not aware of any quota scheme in or out of the U.S. — certainly not for a fashion product, with a far-flung distribution network — administered solely on an auction basis.

Also, periodic public auctions would likely become a protectionist spectacle, as the news media focused on the ever rising price of bids, the panic buying as quota neared filling and the huge profits of sophisticated speculators.

It is also clear that the U.S. auctions would be of questionable effectiveness in denying foreign producers the quota gain in cases where they were part of an import control scheme — such as OMAs — that allocated quotas to specific countries. There, the foreign countries could simply adopt their own quota system and capture for themselves some or the most of the quota gain: U.S. interests, including consumers, would then have multiple quota systems with which to contend.

Mandatory all-inclusive auctions in all cases where quotas are imposed (except where found to be "impractical") elevates the capturing of the quota windfall and academic theories above all practical considerations, including massive, non-economic misalignments of the distribution system.

Indeed, under the bill, auctions are mandatory for quotas even if the auction mechanism would have counterproductive consequences on the adjustment process. In the shoe industry, for example, the demise of the many small retailers who would lose their access to imports due to auctions would hurt the U.S. producers that rely on such retailers as prime customers.

Quotas are bad for consumers, bad for businesses heavily dependent on foreign products without alternative domestic sources and of questionable value to U.S. industry. Auctions make quotas worse.

B. "Bureaucratic Nightmare"

Permanent Auction Corps. Auctioning quota rights is a complicated business. Government will have to invest significant resources in staff expansion and in development of extensive expertise on an industry-by-industry basis in order to minimize counterproductive and unintended side effects. Frankly, we question whether it can ever be done effectively.

The size of the bureaucracy would depend on the size of industries subject to the auction system (such as autos, steel, shoes, etc.). It would also depend on the extent to which the mandatory relief provision in the bill stimulates more escape clause cases, which, in turn, result in more instances of import quotas. A large and permanent bureaucracy devoted exclusively to conducting, administering, policing and investigating auction activities is assured.

How auctions would be managed for the non-rubber footwear industry is in itself a huge question. At present, there are about 500 retailers and importers who enter footwear as importers of record. Their businesses depend upon this freedom and each would certainly make, within the confines of their individual resources, every effort to assure that they receive sufficient quota to continue their business. Unfortunately for many of these businesses, their sophistication at managing, if not manipulating, the government auctions, rather than their creativity as shoe merchants, will determine whether or not they continue in business.

The "bureaucratic nightmare" relates not just to the size and likely permanant character of the staff necessary to administer such a program, but, perhaps most importantly, to the fact that government, rather than the marketplace, would make many of the key decisions which determine which sectors of the market receive quota.

Surely, if the Congress, despite these considerations, legislates an auction system, it must direct the Administration to consult fully with an affected industry, including retailers and importers, before developing and implementing any auction scheme. In addition, Congress must direct the Administration to adopt only schemes that are designed and operated to minimize the cost and inconvenience to consumers and to affected industries other than that seeking import protection. Even assuming such consultation and such a directive from Congress, there is little comfort for businesses, like the shoe retailing industry, which would have virtually its entire source of supply subject to a government run free-for-all.

C. Costs Outweigh the Benefits

In addition to the expense associated with the creation and maintenance of a government apparatus for administering quota auctions, there would be many other costs.

Risk to Distribution Investments. Quotas, in and of themselves, depending how they are structured and the extent to which they limit imports, can disrupt, to some extent, distribution channels, including the retail network.* Auctions, by their nature, create a new and manisfestly greater risk for the distribution system and could themselves result in severe losses in that system.

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*Traditional methods of administering quotas have minimized the disruption of existing trade patterns and established commercial relations. This has kept down the overall costs to the public, including consumers, limiting the violence to commercial interests that otherwise flows from the quota shortage and price increases. OMA's have invariably allocated quota to foreign producers within the foreign country according to their historical shipment levels. This has served to keep buyer/seller relationships substantially in place during the temporary period of import restrictions. An import licensing system, with U.S. interests allocated quota based on their historical import levels would have much the same effect.

Auctions, by contrast, invite a made scramble for market share enlargement by quota manipulation and speculation with the largest, wealthiest and most sophisticated firms using the government system to weaken or destroy competition. This is a menacing concern in an industry like footwear where U.S. producers/importers have such dominate market power — to set prices and styles — and can outbid non-manufacturing importers by spreading their higher bids across their domestic output, which is now insulated from foreign competition.

Existing patterns of trade and established commercial relations both domestically and abroad would be subject to radical disorder beginning with the first auction; firms that received no or little quota would be ruined immediately. Each subsequent auction would intensify fears and panic bidding. Indeed, in the shoe industry, where all but a small percentage of merchandise is imported, a comprehensive auction system would eliminate normal year-to-year business planning, as retailers and importers would not know from one year the the next whether they would even be in business.

The vagaries of auctions, especially the potential for speculation, quota hoarding, manipulation, and monopoly, add a new dimension of unpredictability to business planning and put in jeopardy the simple imperative that a company have the product that its customers demand and that it needs operate.

Coping with an auction system will largely be a function of the resources available to a particular company to develop the sophistication and organization necessary to ensure the securing of the quota it needs to operate.

Small importers and small retailers engaged in direct importing will surely suffer, either because they bid too low and too high. Low bids result in no quota and bids that are too high will turn out to be non-economic and lead to financial ruin. Set aside for such small enterprises, while perhaps motivated by a sense of fairness, would introduce new complexities and confer a non-economic windfall on these companies at the expense of the public, which would be deprived of the lower prices of more efficient bidding and distribution.

Large importing concerns, including the nation's chain retailers, would have to expend huge sums in developing the resources needed just to get product for their stores. Competition for quota, like all aspects of the retail shoe business, would be keen and the potential for errors and misjudgments in this field are manifest, raising the possibility that even large firms could suffer financially, perhaps fatally, from errors in auction strategy. As merchants, we believe that mandating this kind of business risk is wrong and should not be utilized, particularly when there is a clear alternative — tariffs — which accomplishes the public policy goal without such risks to business.

The purpose of "escape clause" relief is not the jeopardizing of distribution investments or the disruption of existing retailing operations. Yet, a comprehensive auction — separate from the effect of the quota itslef — would have such an effect, putting both small and large retail and importing enterprises at substantial risk. A temporary period of quota auctions could bring about permanent and irreparable alterations in the distribution network. Sadly, all of this could occur without meaningful improvement in the international competitiveness of U.S. shoe producers and at great cost to the public.

Auctions Confer Undue Advantages on U.S. Producers. The Australian experience in auctioning a segment of their shoe quotas foreshadows what would happen here if auctions were used for shoes (about 35% of the quota is auctioned, the rest is allocated to importers, retailers, etc., based on their prior imports). In both countries, manufacturers are also major importers. In the U.S., the ITC reported that about 45% of the value of all imports in 1984 were by U.S. shoe manufacturers (USITC Publication 1717, July 1985, A-86). Bids by manufacturers, who are able to recoup part or all of their bids in higher prices for their domestically made products, establish the bidding pattern, driving up auction bids above market prices.

> "But by far the most significant influence on the tender quota price for footwear are bid levels determined by the dominant local manufacturing/importing bloc, which may control up to 45 or even 50 percent of all available quota, i.e. base and tender. Unlike non-manufacturing importers, local manufacturers can amortise the cost of quota over their own local production and thus gain a significant competitive advantage in the tender bidding process.
>
> In practice, it is the bid levels set by manufacturing interests, rather than any market signals from consumers, which determine what others must bid if they are to secure some tender quota." Australian Retailers Assn. Footwear Committee, Submission to the Industries Assistance Inquiry, May 10, 1985, p.11.

With this kind of control over imports, manufacturers are able to minimize their vulnerability to import competition by importing complementary rather than substitute products. In Australia, the resulting lack of competition has stifled domestic style and price responsiveness, and geared domestic production improvements to economies of scale rather than satisfying consumer demand. Thus, positive adjustment and preparation for return to a free market environment has been retarded by the auction's power in the hands of domestic producers.

In the U.S., the potential for monopoly power in quota auctions by the large U.S. producer/importers is manifest and its exercise through the auction mechanism must rank as a serious public policy objection to the use of auctions in this industry, quite apart from the question of "impracticability."

In 1984 according to ITC data, U.S. shoe manufacturers controlled 70% of the factory value of all shoes sold in the U.S. ($4,062 million in U.S. shipments and $1,995 in import shipments). It is clear that no public policy would be served by confering such an advantage on these domestic shoe producers, whose U.S. shoemaking profits have consistently been far above the average of all U.S. manufacturing (USITC Publication 1717, July 1985, A-59).

Speculation and Quota Auctions. Another key auctioning system issue is whether quotas would be transferable. Bidders will either bid for too many or too few shoes. Without transferability, quotas could not be fully utilized, thereby exacerbating the scarcity of supply problem associated with the quota itself and increasing the degree of protection. Since business planning is not a perfect science, it is essential that merchants have the opportunity to augment or reduce their quota supply in order to accommodate changing business needs.

While quota transferability is essential for business operations, it would also result in the creation of a secondary, commodity-like market, driven by speculation and profit. One can envision some of the nation's savviest financeirs entering quota auctions and buying up huge quota positions and later "retailing" that quota to the nation's shoe retailing and importing industries, recouping for themselves huge quota premiums.

As merchants, we believe that such a system would create an additional cost and premium over and above the quota scarcity rent itself, which premium would have to be born, ultimately, by the consuming public.

One possible way of mitigating, although not eliminating, the possible distorting effects of a speculative commodity market in quotas would be the requirement that a non-refundable security deposit be made for each winning bid. Provision should also be made to protect low priced imports by allowing

a refund to the extent the deposit exceeds the bid amount for the entry for which the license is ultimately used.

Despite the use of such deposits in the Australian shoe auction system, the Australian government has noted:

> "The Committee reported that there was some concern that speculation had forced up the price of quota to the disadvantage of genuine importers. Members noted that the Customs Act required successful tenderers to give an undertaking to import against their tender quota allocation. The Minister said that the ability to transfer quota should importers' circumstances change was an integral part of the flexibility provisions of the program and should not be withdrawn. Nevertheless, the Department of Industry and Commerce has been asked to develop procedures to prevent transfer of tender quota holdings which had clearly been acquired for speculative purposes." Australian Department of Industry and Commerce release accepting the report of TCF Advisory Committee, December 1982.

To date no mechanism has been developed in Australia that has prevented speculation and quota selling profits, although the program now restricts secondary quota sales to 20% of the total quota secured by a bidder at auction.

Protecting Low Income Consumers. The design of any auctioning scheme will of itself discriminate in favor or against importation of low priced products and their low and middle income consumers. There are three basic bidding methods that could be employed: (1) Percentage of F.O.B. value; (2) a dollar amount; or (3) F.O.B. price.

Under the percentage of F.O.B. value method, which is presently used in Australia for the auctioned portion of shoe import quotas, the quota is awarded to the highest percentage bid. After all bids have been reviewed, the lowest winning percentage of F.O.B. is determined and that percentage becomes ad valorum tariff applied against the F.O.B. when the quota is used to import footwear. The lowest winning percentage, thus, becomes the tariff for all winning bids. This method tends to diminish the adverse effects of quota auctions on low priced products.

By contrast, an auction system based upon the highest dollar amount bid would favor higher priced imports, since the customers of these products are in a better position to pay higher prices. Obviously, a dollar amount will represent a far larger percentage of a lower priced product than of a higher priced product. Similarly, a bidding structure based on the highest F.O.B. price would, by its nature, eliminate lower priced imports.

Timing. The sequence of auctions would be of key importance in addressing the needs of a particular industry, such as seasonality, and in minimizing speculation. Moreover, it is imperative that any auction take place at a reasonable time before a quota period begins so as to facilitate business planning.

Auctions at least once a year would seem essential for all business, and twice a year for a seasonal business like shoes seems to make sense.

D. Auctioning and United States Obligations Under the GATT

It is not clear that the U.S. could establish an auctioning scheme which operates in a manner which is consistent with its obligations under Articles II and VIII of the GATT.

The escape clause provisions of Article XIX provide an exception from the GATT rules insofar as is necessary to prevent or remedy serious injury to a domestic industry. However, an auctioning scheme could be viewed more as a revenue device and a non-tariff barrier than as a measure necessary to protect a domestic industry. If the auctioning scheme were viewed as a revenue device and, therefore, not within the scope of Article XIX, then an auctioning scheme could be found to be inconsistent with Article II which prohibits the imposition of all fees beyond the bound tariff rate except those minimal fees commensurate with the services rendered. Since fees collected in a quota auction are apt to be higher than a minimal user fee, the auctioning scheme would likely be found inconsistent with Article II.

Additionally, Article VIII of the GATT provides that fees relating to import licenses "shall be limited in amount equal to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes." Whether or not fees resulted in additional protection to the U.S. industry, an auctioning scheme could be viewed as an additional tax on imports and therefore inconsistent with Article VIII.

Further, Article 3 of the Licensing Code prohibits the use of licensing procedures which in and of themselves have trade restrictive effects. Thus, the collection of an auction fee, the fact that the fee was more than a mere incidental user fee, and any administrative difficulties encountered by importers under an auctioning scheme could be viewed as trade restrictive effects.

E. Summary

Utilization of auctioning as the exclusive mechanism for allocating all quotas is impracticable in most if not all cases, and would increase the costs and level of protection of the quota itself. It would also compound the harm to consumers and retailers of any quota and is a most cumbersome way of achieving the desirable goal of minimizing quota windfall to foreigners and keeping quota rents in the United States.

FRA believes that the quota windfall concern can be best met through tariffs rather than quota auctioning. Tariffs create no quota gain and keep all revenues in the U.S. Treasury. The revenues could be allocated to Trade Adjustment Assistance if Congress so elects. They are easily administered and interfere least with market mechanisms having a much less disruptive impact on trade, consumers and retailers. Moreover, unlike quota auctions, tariffs provide the requisite certainty and predictability which allows businesses to operate.

Finally, the level of a tariff can be geared to establish the appropriate degree of protection and raise the level of funding needed to defray U.S. obligations under an approved adjustment plan. Auction revenues, by contrast, would raise an indeterminate amount of revenue, perhaps far in excess of adjustment funding needs — all paid for by purchasers of a necessity item like shoes.

III. TRANSFER OF AUTHORITY FROM THE PRESIDENT TO THE USTR

Under current law, the President is vested with the ultimate authority to decide whether import restrictions are in the national economic interest in escape clause actions. The bill would transfer this final decision-making authority from the President to the USTR.

FRA believes that USTR lacks the expertise, resources and breadth of policy responsibility to analyze properly the factors involved in the national economic interest. The President, who has the ultimate responsibility for the

national economic interest, is the only authority in a position to undertake such a far-reaching analysis.

USTR Lacks the Breadth of Responsibility to Decide the National Economic Interest. The USTR's mission is to carry out U.S. trade policy and advance our international trade interests. The USTR's focus is, therefore, only a small segment of the overall national economic interest. It does not extend to many of the most important factors involved in that interest such as the concerns of consumers, workers, U.S. businesses (most of which are not directly involved with trade), growth of the domestic economy and other domestic policy goals, such as inflation control. Moreover, many international economic concerns, such as exchange rates and foreign debt, which can have an enormous effect on our national economic interest, are not the primary responsibility of the USTR. In short, the bill confers decision-making authority on an office that is not otherwise charged with the responsibility for making overall policy in an area in which its decisions can have a profound effect.

In contrast, the President has the constitutional authority and public responsibility for developing overall policies to further our national economic interests. He is, thus, in the best position to analyze all the competing factors involved in that task and to make decisions in particular cases that are consistent with his overall national economic program. Only the President can properly make final decisions on issues that affect the national economic interest, since he alone is ultimately accountable to the public.

The sitting USTR opposes the transfer of the final authority under Section 201 regarding import relief determinations from the President to USTR and we agree. It is in recognition of USTR's limited scope, areas of responsibility and resources that Ambassador Yeutter has testified that the President is in the best position to make the final decision in 201 cases.

IV. DISADVANTAGES OF MANDATORY IMPORT RESTRICTIONS

The way the bill is structured, even the authority of the USTR, in most cases, is removed and placed in the ITC.

The bill would establish a two track mechanism under which an industry would have the option of requesting ITC approval of an adjustment plan or proceeding under the current Section 201 provisions without such a plan.

In instances in which the industry chooses the adjustment plan option and the ITC finds injury and approves an adjustment plan, import restrictions would be automatic. The USTR could not decide against the imposition of import restrictions but would be empowered to adjust the form and scope of such restrictions.

In instances in which the ITC finds injury but fails to approve an adjustment plan or finds injury but the industry has not requested an adjustment plan, the ITC would be required to recommend import restrictions. It is only in these cases that the USTR could decide against the imposition of restrictions upon a determination that they were against the national economic interest.

Automatic Relief Can Defeat the Purpose of Section 201 — to Provide Temporary Assistance and Promote Adjustment

Congress enacted Section 201 to provide the means by which U.S. industries, substantially injured or threatened with substantial injury as a result of increased imports, may seek temporary import relief and/or adjustment assistance in order to facilitate adjustment to import competition.

> The rationale for the "escape clause" has been, and remains, that as barriers to international trade are lowered, some industries and workers inevitably face serious injury, dislocation and perhaps economic extinction. The "escape clause" is aimed at providing temporary relief for an industry suffering from serious injury, or the threat hereof, so that the industry will have sufficient time to adjust to freer international competition. Senate Finance Committee Report No. 93-1293 on H.R. 10710, Trade Reform Act of 1974, November 26, 1974 at 119.

This Congressional intent may not always be promoted through import restrictions.

Successful adjustment to import competition generally is achieved through changes in product mix, improvements in productivity or restructuring.

Import relief can impede the successful adjustment of industries which are adjusting by means of restructuring by perpetuating or expanding inefficient or unprofitable parts of the industry. Import controls, in such a case, will encourage an industry to persist in or expand production of products in which it can never compete internationally.

Not only may import relief retard adjustment, it may even work against the interests of workers whose jobs, created or preserved by such relief, can clearly be seen as temporary from the very outset. It is not fair to encourage workers to stay in or enter short-term, dead-end jobs instead of providing retraining and relocation into jobs with long-term prospects. That is precisely the impact that mandatory import relief could have on U.S. workers.

The domestic non-rubber footwear manufacturing industry is just such an industry. The President found in the most recent Section 201 shoe investigation that import relief would not have facilitated the further adjustment of the industry because the industry was already adjusting. Despite heavy import penetration, the more efficient, properly positioned producers are operating profitably and adapting successfully to import competition. The long term competitive inadequacies of the contracting firms would not have been reversed by temporary import restrictions. Had import relief been mandatory in the footwear case, the adjustment process would have been impeded, if not reversed. Import restrictions would have extended the life of firms (or helped start up new firms) which would go out of business as soon as the import relief was terminated.

A recent study by the Institute for International Economics of 16 industries that were granted import relief over the last 30 years found that of those industries studied, only one had adjusted to import competition through expansion and 11 had adjusted through contraction, and that no appraisal could yet be made with respect to the remaining four industries. This is strong evidence that requiring import restrictions in all instances, in which injury is found and a plan approved, is not sound policy and would often hurt rather than facilitate adjustment.

ITC Should Have the Option of Recommending Adjustment Assistance Without Import Restrictions. As is the case under current law, the bill should allow the ITC the flexibility of recommending adjustment assistance only and, to decide against recommending import restrictions, in instances in which industry adjustment would not be facilitated by the provision of import restrictions.

ITC Criteria for Judging Adjustment Plans. The bill fails to spell out sufficient criteria for the ITC to evaluate a proposed industry adjustment plan. All the bill provides is that the ITC shall approve a plan if it determines that the plan will: (1) facilitate the adjustment of the industry to import competition; and (2) enhance the industry's international competitiveness. It provides no guidelines as to how the ITC is to make this evaluation.

Most importantly, the bill does not require the Commission to determine that the plan will result in a domestic industry that can be competitive without import protection after expiration of import relief provided under the program. Without a positive finding by the ITC on this threshold issue, no plan can be said to promote industry adjustment.

In addition, the bill should direct the ITC to approve an adjustment plan only if it makes an affirmative determination on each of the following criteria: (1) the feasibility of implementation, (2) the willingness of the domestic industry to cooperate in implementation, (3) the industry is taking action to promote adjustment, and (4) the cost of the plan is justified in terms of the results likely to be achieved.

The President Should Have The Ability to Reject Import Relief If It Is Not In The National Economic Interest. Under the bill, as noted, if the ITC finds injury and approves an adjustment plan, the Administration must impose import relief regardless of the circumstances. This puts ultimate decision-making power in the ITC. This is wrong — in a particular case, considerations involved in the national economic interest may overwhelm the interests of a particular industry in import protection. In any event, this decision must be reserved for the President.

Mandatory import restrictions in every case assumes that the national economic interest — which includes U.S. international obligations and relations, and the interests of consumers, exporters, retailers and the other sectors of the U.S. economy — should always be subordinate to the interests of the affected domestic industry no matter what the cost or how far-reaching the foreign or domestic policy considerations.

The bill places an independent commission in the position of making decisions for which it has no responsibility and for which it cannot be held accountable. Certainly, there will always be some cases in which the costs of relief so far outweigh the benefits, or in which import restrictions impede adjustment, that they should not be implemented.

FRA believes that the President should retain the ability to reject import restrictions in cases where import restrictions are inconsistent with the national economic interest.

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AND THE MAJOR SHOE OUTLETS THEY OPERATE

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C.H. Baker Shoes
Mailing Shoe Stores
Marilyn's
Shoe Kicks
Hot Feet
Burton Shoe Stores
Sole Hole
National Shoes
A.S. Beck
Delton's
Grandstand
Joeffrey Shoes
Mary Jane Stores

C & J CLARK AMERICA, INC.
Hanover Shoe
Big Sky

EDISON BROTHERS STORES, INC.
Chandler's
Baker's
Leed's
Burt's
The Wild Pair
Gussini

ENDICOTT JOHNSON CORP.
Endicott Johnson
Endicott
Father & Son
Liberty Shoes

FISHER CAMUTO CORP.
9 West

GENESCO, INC.
Flagg Brothers
Hardy
Jarman
Foot Scene
Johnston and Murphy
Factory to You
Cover Girl
Innes

*Leased shoe departments

KINNEY SHOE CORP.
Kinney
Foot Locker
Lady Foot Locker
Frugal Frank's
Fredelle
Stylco
Athletic Shoe Factroy

KOBACKER STORES, INC.
Picway
Patrini
Shoe Works
Pix of America

MELDISCO
*K mart

MELVILLE CORPORATION
Meldisco
Thom McAn
Open Country

MONTGOMERY WARD & COMPANY

MORSE SHOE, INC.
Fayva
Upstage
Morse
*Bradlees
*Richway
*Wal-Mart
*ShopKo Stores
*Murphy's Mart
*Hills

THE NOBIL SHOE COMPANY
Saveway Shoes
Nobil

J. BAKER, INC.
*Ames
*Fisher's Big Wheel
Parade of shoes

J.C. PENNEY CO., INC.

PIC 'N PAY STORES, INC.
Pic 'n Pay Stores
Barett Shoes

J.S. RAUB SHOE CORP.
J.S. Raub Shoe Stores

SCOA INDUSTRIES, INC.
Gallenkamp
By-Way Shoes
Shoe Salon
*Buckeye Outlets

SEARS ROEBUCK & COMPANY

SHOE CITY, INC.
Shoe City

SHOE-TOWN, INC.
Shoe-Town

SHONAC CORPORATION
The Footwear House
Shonac Value City
Hart's

SPENCER COMPANIES, INC.
*Jamesway
*Rink's

STANDARD SHOE COMPANY
Standard Shoe
Shoe Rax

THOM McAN SHOE COMPANY
Thom McAn

TRADEHOME SHOE STORES, IN
Tradehome Shoe

VOLUME SHOE CORPORATION
Pay-Less Shoe Source
Volume Shoe Source

WAL-MART HUTCHINSON SHOE
Wal-Mart Stores

ZAYRE CORPORATION

Statement Submitted by the Formosan Association for Public Affairs

UNFAIR TRADE PRACTICES BY THE GOVERNMENT ON TAIWAN

I. Introduction

The Formosan Association for Public Affairs is very pleased to have the opportunity to submit a written statement to the U.S. House of Representatives Subcommittee on Trade of the Committee on Ways and Means concerning unfair trade practices by the Kuomintang (KMT) government on Taiwan.

Our organization is a progressive Taiwanese-American public policy research organization. Our goals are to seek international support for the right of the people on Taiwan to determine the future of Taiwan (Formosa, including the Pescadores); to promote human rights, freedom, and democracy for the people on Taiwan; and to protect and enhance the rights, interests, and welfare of Taiwanese communities throughout the world.

We are, of course, strongly committed to maintaining and enhancing mutually beneficial trade relations between Taiwan and its largest trading partner, the United States of America. However, we believe that the current government on Taiwan, which has imposed its rule by means of martial law for the last 37 years--the longest period of martial law in modern history--has used its virtual absolute power to further unfair trading practices.

The most recent report by the United States Department of State concerning human rights practices on Taiwan succinctly spells out the ways in which the political elite on Taiwan monopolizes power: "Taiwan's polity is dominated by the Nationalist Party (Kuomintang or KMT) in an essentially one-party authoritarian system...The small and aging leadership group whose members came to Taiwan from the China mainland after World War II runs the KMT, the military, the security apparatus, and the executive bureaucracy. Political control is exercised through these bodies under a constitution whose major democratic provisions have been circumscribed by martial law provisions enacted in 1949." [1]

In this statement, we will examine the implications of the KMT's martial law rule for three areas related to trade: internationally recognized labor rights, excessive tariff barriers, and the development of state monopolies and state-protected private cartels.

II. Internationally Recognized Labor Rights

We are presenting the material in this section on behalf of the Taiwan Association for Labor Rights, an organization on Taiwan which seeks to defend the rights of the working people on the island.

We applaud the efforts of Congressman Donald J. Pease (D-OH) and his colleagues to include violations of internationally recognized labor rights in the statutory definition of unfair trade practices. We believe that the KMT government on Taiwan has used labor repression as a key element in its efforts to achieve competitive advantages for the trade dependent economy.

Title V of the Trade Act of 1974, as amended in 1984, defines internationally recognized labor rights as freedom of association; the right to organize and bargain collectively; freedom from forced or compulsory labor; the right to a minimum working age; and the right to acceptable conditions of work with respect to wages, hours of work, and occupational safety and health.

There is abundant evidence that the KMT authorities have, as a matter of policy, denied the rights of the workers of Taiwan in at least three of these five areas. The U.S. Department of State and other authoritative sources have documented the violations.

A. Freedom of Association

Under martial law, the Taiwan Garrison Commander, who administers martial law, has the right to limit freedom of association to the extent that it is "prejudicial to...military affairs." Defining what is prejudicial to military affairs is the sole prerogative of the Commander. [2]

In addition, the World War II era "Law Governing the Organization of Civic Bodies During the Extraordinary Period" permits the legal establishment of no more than one association per organizational function. The authorities have used this law to forbid organizations which criticize government policies from registering; this makes such organizations "illegal," and subjects their members to prosecution. [3]

A 1929 law places considerable restrictions on the "formation, purposes, and operations of labor unions," according to the State Department. The Ministry of the Interior has the right to dissolve unions for "disturbing public peace and order," a charge which the KMT authorities have frequently used arbitrarily and capriciously to suppress dissent. [4]

Finally, the labor movement on Taiwan has little economic or political influence. The State Department considers unions on Taiwan to be subject to government domination: "It is generally believed that labor unions, especially general federations, have close ties with the ruling KMT. However, KMT control is not absolute..." [5]

In effect, union presidents are appointed by the Ministry of the Interior, and local government and KMT party officials frequently exercise control over the appointment of shop stewards and other enterprise level union officers. Several observers have documented efforts by the government to use labor unions as a vehicle for maintaining social control and disseminating propaganda among workers. [6]

B. Right to Organize and Bargain Collectively

The State Department has clearly spelled out the limits on collective bargaining on Taiwan: "Collective bargaining, although provided for by legislation, does not in fact take place." [7] Thus, the KMT uses liberal statutes as a mask to cover up repressive labor policies.

Government employees, teachers, and defense industry workers may not, under existing law, form or join unions.

In other industries and professions, union membership is mandatory for all workers aged at least 16 in each county or municipality where an appropriate union exists. An industrial or craft union must, by law, be established in each county or municipality where more than 30 workers are employed in a given industry, enterprise, or profession. The authorities do not enforce the laws mandating union membership, however, and in 1985, less than 20% of Taiwan's workers actually belonged to unions. [8]

According to the State Department, "Individual factory unions do...facilitate the resolution of disputes. However, given the close ties between local union leaders, the ruling party, police, government officials, and, in many cases, the managers of the enterprise, it is far from clear that this grievance role guarantees the workers fair and equitable treatment. [9]

The restrictions on the right to association already discussed pose considerable barriers to the organization of new, free and independent trade unions. Martial law erects another substantial impediment to the right to organize and bargain collectively as well: strikes are forbidden, and workers who defy this ban are subject to courts martial and the death penalty. [10]

C. Acceptable Conditions of Work with Respect to Minimum Wages, Hours of Work, and Occupational Safety and Health

As in the case of collective bargaining, the enactment liberal labor laws regarding wages, hours, and occupational safety and health have not meant effective protections for Taiwan's workers, due to government unwillingness to implement these laws aggressively. For example, the 1984 Labor Standards Law forbids wage discrimination based on sex, but women generally earn no more than 40-50% of the male wage, and the State Department expresses doubt as to the new law having any impact upon this gap. [11]

Similarly, the new labor law extends maximum hour protections and guarantees of paid vacations to all covered workers, but as of February 1986, nearly two years after the passage of the law, the authorities had failed to implement these provisions fully. [12]

Most importantly, the labor law revisions do not cover 3.5 million of Taiwan's 7.5 million workers. [13]

According to the State Department, "Enforcement of safety and health standards is frequently weak." In part, this is because workers in small, family owned firms (95% of Taiwan's businesses) are "often reluctant to report violations of labor and safety regulations." [14] Safety and health problems are also quite severe in several key sectors that employ large numbers of workers. In the mining industry, hundreds of workers have died because of unsafe conditions and outmoded equipment over the last few years. A disproportionate number of the miners involved in these accidents come from Taiwan's impoverished Malayo-Polynesian community, which also suffers from official social and cultural discrimination. [15]

Safety and health conditions are also poor in the export oriented electronics, electrical, and footwear industries. Enterprises in these sectors often have poor lighting and ventilation, leading to eye and respiratory problems. Assembly workers using binocular microscopes in the electronics and electrical industries are especially susceptible to eye problems, but efforts to make this a union organizing issue have led to reprisals against organizers. In the footwear field, hazardous products such as high strength glues do not carry warning labels intelligible to the workers, nor are they given special training in how to handle such materials. [16]

An especially important safety issue relates to Taiwan's fishing industry. Workers in this highly competitive field often venture into the territorial waters of neighboring Southeast Asian nations. The KMT government does not have diplomatic relations with any of the governments of these countries, because it continues to claim that it is the legitimate government of China, even though it has only governed Taiwan, the nearby Pescadores archipelago, and a few small islands off China's Fujian coast since 1949. Therefore, hundreds of Taiwanese fishermen languish in Southeast Asian prisons without hope of assistance from their home government.

III. Excessive Tariff Barriers

In order to protect domestic industries, the Taiwan government imposes exceedingly high tariff barriers. This is particularly true in the case of imported automobiles, which might otherwise offer the United States a means of ameliorating its multi-billion dollar trade deficit with Taiwan. These barriers not only hurt export oriented American businesses, with a negative impact on jobs, but also cause economic harm to Taiwan's consumers.

IV. State Monopolies and Protected Private Cartels

Similarly, the development of state-controlled monopolies and government protected private economic privileges (similar to "crony

capitalism" in the Philippines under former President Ferdinand Marcos) can undermine the opportunities for trade reciprocity and mutual benefits. Such enterprises not only enjoy freedom from the rigors of the domestic free market, but may also gain unfair leverage in the export market and protection from foreign competition.

Partisans of the KMT regime often call Taiwan "Free China," a bastion of free enterprise. Nevertheless, its economy is in fact characterized by a substantial public sector, with certain industries reserved to the state. For example, brewing, distilling, and cigarette manufacturing are reserved for a government monopoly. This not only reduces consumer choice, but in recent years, some of what the government produces has been of inferior quality.

Other areas of Taiwan's economy are controlled by government protected cartels. Cement manufacture, for instance, is reserved for five domestically owned firms, all of which have intimate ties to the KMT. As in the Philippines, this situation not only leads to economic distortions, but helps to breed corruption.

V. Conclusion

We believe that it is clear that the KMT government has failed to protect internationally recognized labor rights, and has carried out a deliberate policy of labor repression in order to keep labor costs down (the U.S. Department of Labor estimates that in 1985, workers on Taiwan made on the average 13% of the wages of their American counterparts) and reduce worker militancy. This is a key facet of the government's export-led growth policy. Moreover, the KMT has used a variety of tariff and non-tariff barriers (such as state monopolies and protected cartels) to protect its home market from external competition.

We have no doubt that these measures have aided Taiwan's exports and helped to maintain a favorable trade balance with the United States that reached $10 billion in 1984.

We are not opposed to trade between Taiwan and the United States, and indeed, continuing a reciprocal trade relationship that is mutually beneficial is a key purpose of the Taiwan Relations Act of 1979, which we strongly support. However, we believe that the KMT government's denial of worker rights and maintenance of artificial barriers to imports and domestic economic competition have hurt workers, consumers, and entrepreneurs on Taiwan, as well as workers and the industries which employ them in the United States.

We very much appreciate the opportunity to bring these matters to the Subcommittee's attention.

NOTES

1. Country Reports on Human Rights Practices for 1985, Report Submitted to the Committee on Foreign Affairs, House of Representatives and the Committee on Foreign Relations, U.S. Senate by the Department of State in Accordance with Sections 116 (d) and 502 (b) of the Foreign Assistance Act of 1961, as Amended (Washington: U.S. Government Printing Office, 1986), p. 753.

2. Martial Law on Taiwan and United States Foreign Policy Interests, Hearing before the Subcommittee on Asian and Pacific Affairs of the Committee on Foreign Affairs, House of Representatives, Ninety-Seventh Congress, Second Session, May 20, 1982 (Washington: U.S. Government Printing Office, 1982), p. 178.

3. Country Reports, p. 764.

4. Ibid., p. 760.

5. Ibid.

6. Don Luce et al., Made in Taiwan: A Human Rights Investigation (New York: Clergy and Laity Concerned, 1978), p. 15; Linda Gail Arrigo, "Economic and Political Control of Women Workers in Multinational Electronic Factories in Taiwan: Martial Law Coercion and World Market Uncertainty," North American Taiwanese Professors' Association Bulletin 4:2 (December 1984):20-21.

7. Country Reports, p. 760.

8. Ibid.

9. See, for example, Arrigo, p. 20n.

10. Country Reports, p. 760.

11. Ibid., pp. 765-766.

12. Ibid., p. 766.

13. Ibid.

14. Ibid.

15. Taiwan Communique No. 21, August 18, 1985, pp. 20-22; Taiwan Communique No. 23, January 18, 1986, p. 22.

16. Made in Taiwan, p. 15; Arrigo, pp. 21-23.

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PFA
WE'RE GROWING BETTER

April 15, 1986

Joseph K. Dowley, Chief Counsel
Committee on Ways and Means
U.S. House of Representatives
Room 1102
Longworth House Office Building
Washington, DC 20515

Dear Mr. Dowley:

Since I was not given the opportunity to make a personal appearance before the subcommittee on unfair trade practices, section 301, Trade Act of '74, section 337, Tarrif Act of 1930, anti-dumping and countervailing duty laws; I want to speak especially to section 337 about the anti-dumping and countervailing duty laws.

We believe subsidies are unfair competition. I understand that 1979 Trade Act, Title I, imposed the words, "an industry must prove serious injury and that imports are a sbustantial cause of serious injury". These tests should be abolished. Even though they are actual fact, to prove them to the International Trade Commission in a hearing is almost impossible.

I enclose exhibit I which shows the tremendous growth of imports from 3% in 1980 to 16% in 1984.

Exhibit II shows the percent of growth of imports since 1980 compared to 1984 and the fact that all the countries are using subsidies except Taiwan.

I can document figures to show that this year alone the amount we had to reduce the price to tomato growers has cost the farmers of the USA.

The amount the farmers of the United States will receive for the tonage they delivered this year compared to the same tonage delivered last year.	$32,000,000.00 less
Acres replaced by imports	61,000
Total cost of the American farmer	$131,000,000.00
Total cost to American industry (including the farmer's loss)	$392,755,060.00

If we had the opportunity, we would be glad to appear before committee to answer questions and have these figures documented. The law should allow the United States to place countervailing duties on other countries to offset the subsidies.

Because of subsidies, the price that imported tomatoes and tomato products are selling for, we have lost over $1,000,000.00 this year on $39,000,000.00 worth of sales. This loss is in spite of the fact that we have a state-of-the-art processing facility just completed in 1984.

Also, I believe the above applies to Import Relief and Adjustment (sections 201-203, Trade Act of 1974); National Security (section 232, Trade Expansion Act of 1962) clarifying the "substantial cause of serious injury" standard with respect to general recessionary conditions in the U.S. economy.

Sincerely,

F. Foster Furman
Chairman of the Board

#1

APPENDIX II

TOMATOES, PROCESSED: 1/ U.S. PRODUCTION, EXPORTS, IMPORTS AND APPARENT CONSUMPTION

(QUANTITY IN THOUSANDS OF POUNDS)

YEAR	PRODUCTION	EXPORTS*	IMPORTS*	APPARENT CONSUMPTION	IMPORTS % OF CONSUMPTION
1980	1,929,616	70,449	66,997	1,926,164	3%
1981	1,867,305	67,848	171,546	1,971,003	9
1982	2,266,882	50,150	386,872	2,603,604	15
1983	2,102,555	45,521	371,077	2,428,111	15
1984	2,312,811	39,806	412,613	2,658,618	16

1/ Includes Tomato Puree, Paste and other Canned Tomatoes.

* Includes Tomato Sauce.

Source: Estimated by California League of Food Processors/National Association of Growers and Processors for Fair Trade.

TABLE I 1/
Tomato Products
U.S. Imports for Consumption

Calendar Year 1980 Compared to 1984

	Percentage Increase in Volume in Lbs.	Percentage Increase in Value in U.S. $	Utilize Subsidies
Tomato Paste			
Portugal	900%	899%	*
Mexico	133	76	*
Italy	15,021%	17,229	*
Taiwan	34,505%	42,045	
Israel	3,902	4,834	*
Tomato Sauce			
Israel	1,306%	1,490%	*
Spain	6,552	10,696	*
Italy	2,556	4,380	*
Portugal	5	-42	*
Mexico	1,435	1,155	*
Canned Peeled Tomatoes			
Italy	225%	246%	*
Spain	1,145	1,086	*
Israel	742	897	*
Taiwan	4,555	4,994	
Canada	993	1,227	*

Source: Compiled from official statistics of the U.S. Department of Commerce with the exception of data relative to payment of subsidies. Subsidy payment data provided by the Structure of Global Processing Tomato Production and Trade by Drs. Leon Garoyan and Kirby Moulton.

The above table graphically demonstrates the recent dramatic increase in both volume and value of processed tomato imports from leading producing nations into our domestic market. As an example, one could properly interpret the above table to state that Italian imports of tomato paste increased by 15,000 percent in volume and 17,000 percent in dollar value during the period 1980 to 1984. The table also details those nations which are known to provide their producers with export or production subsidies of various forms. For example the European Community subsidies

1/ From Statement by David L. Zollinger, Executive Vice President, California Tomato Growers Association to Senate Committee on Agriculture, Nutrition and Forestry, April 12, 1985

WRITTEN STATEMENT

BY

MR. HENRY M. CRUZ

DIRECTOR, GUAM DEPARTMENT OF COMMERCE

GOVERNMENT OF GUAM

THE GUAM DEPARTMENT OF COMMERCE HEREBY SUBMITS WRITTEN TESTIMONY FOR THE RECORD WITH REGARD TO MAJOR ISSUES AND PROPOSALS CURRENTLY UNDER CONSIDERATION IN THE PROPOSED TRADE REFORM LEGISLATION.

MY NAME IS HENRY M. CRUZ; I AM THE DIRECTOR OF THE GUAM DEPARTMENT OF COMMERCE, GOVERNMENT OF GUAM. THE FOLLOWING COMMENTS SUBMITTED FOR THE WRITTEN RECORD, ARE THOSE WHICH THE DEPARTMENT OF COMMERCE FEELS IMPORTANT.

1. TRADE REFORM REMEDY HAS BEEN ACCORDED INCREASED EMPHASIS AND ARGUMENTS IN FAVOR OF SUPPORTING RETALIATORY PROTECTIONISM ATTEST TO THE RECENT COLLAPSE OF THE IDEAL OF FREE TRADE AND CONGRESSIONAL CONCERN TO RELIEVE THE PRESSURES OF FOREIGN COMPETITION. ALTHOUGH THE PRINCIPAL FOCUS OF THE PROPOSED TRADE REFORM IS MAINLY ON ISSUES APPLICABLE TO CURRENT U.S. TRADE INEQUITIES, THE LEGISLATIVE PROPOSALS ADDRESSING THE SOURCES OF THIS BREAKDOWN MAY LIE DEEPER THAN THE CURRENT NATIONAL GOALS UNDERLYING THE U.S. TRADE POLICY. AT THE SAME TIME, INTERVENTION AIMED AT PRESERVATION OF AMERICAN BUSINESSES AND JOBS VIA THE PROPOSED REFORM MEASURES WILL EVENTUALLY RETARD THE DEVELOPMENT OF AREAS IN THE U.S. ECONOMY. IN PARTICULAR, GUAM HAS SOMEHOW INHERITED A FOREIGN COUNTRY DESIGNATION, AND IS TREATED AS SUCH.

2. THE STRUCTURAL CHANGES IN OUR TRADE ENVIRONMENT HAVE NURTURED A REACTIVE TRADE STRATEGY WHICH DICTATES THE U.S. EFFORTS IN RELIEVING DOMESTIC FIRMS FROM FOREIGN COMPETITION. OFTENTIMES, REACTIVE INTERVENTION DELIBERATIONS INDIRECTLY AFFECT GUAM'S TRADE PROGRAMS. IT SEEMS RATHER CLEAR THAT THE UNDERLYING U.S. TRADE POLICIES REQUIRE SOME DIRECTIONAL STRATEGIES WITH REGARD TO INTERVENTION ACTIONS.

   THE TRANSFER OF DECISION-MAKING AUTHORITY TO THE U.S. TRADE REPRESENTATIVE, AND REDUCING PRESIDENTIAL DISCRETION MEASURES COMBINE TO EFFECTIVELY ELIMINATE TO A LARGE DEGREE, THE PRESIDENT'S BARGAINING LEVERAGE ADVANTAGE ON MOST TRADE MATTERS. HOWEVER, THE QUESTIONS AND CONCERNS THAT REMAIN ON THE PROPOSED STRUCTURE IS THE TREATMENT OF U.S. TERRITORIES AND THE EXTENSION OF LEVERAGE WITH REGARD TO ISLAND TRADE ISSUES, I.E. GENERAL HEADNOTE 3(A), SWEATER CERTIFICATION ARRANGEMENT, LOCAL ECONOMIC CONCERNS AND ADMINISTRATIVE IMPLICATIONS, LEAD US TO RECOMMEND THAT UNTIL THESE IMMEDIATE ISSUES ARE ADDRESSED IN THEIR ENTIRETY, SUCH PROPOSED REFORM MEASURES MAY NOT OFFER ANY POSITIVE SOLUTIONS TO GUAM'S TRADE CONCERNS.

   GUAM VIEWS THE PROPOSED REFORM CONCERNS AS A POSITIVE AVENUE FOR PROMOTING STRONGER TRADE REFORM MEASURES AS WELL AS ESTABLISHING STRICTER CONTROL AND ALLOWING FOR FLEXIBILITY IN CERTAIN TRADE PROGRAMS. GUAM WISHES TO ACTIVELY PURSUE ITS ROLE AS A U.S. TERRITORY AND ITS RIGHTS AND TRADE

PRIVILEGES WITHOUT SUCH ISSUES INTERFERING WITH THE ECONOMIC AND TRADE DEVELOPMENT CONCERNS GUAM PLACES IN HIGH PRIORITY.

IT SEEMS THAT OUR PRESENT DELIBERATIONS ARE GEARED TOWARDS IMPROVING OUR TRADE RELATIONSHIP AND TRADE ROLE AS A U.S. TERRITORY TO RESOLVE OUR TRADE CONCERNS REGARDING ISSUES ON U.S. INTERIM MEASURES APPLIED TO THE U.S. TERRITORIES. GUAM RECOMMENDS THE U.S. MAINTAIN THE PRESENT EXECUTIVE BRANCH AUTHORITY STRUCTURE, WITH CONTINUED EFFORTS TO FURTHER CLARIFY AND RESOLVE AREAS OF CONCERN TOWARD DEVELOPING GUAM'S TRADE POTENTIAL.

3. GRANTING DECISION-MAKING AUTHORITY THAT CURRENTLY LIES WITH THE PRESIDENT OF THE UNITED STATES TRADE REPRESENTATIVE, WHILE AT THE SAME TIME LIMITING HIS DISCRETIONARY POWERS, MERELY DUPLICATES AND OVERLAPS THEIR EXISTING FUNCTIONS AND RESPONSIBILITIES. ALSO, IT SHOULD BE NOTED THAT DEVELOPING SELF-CREATED ADJUSTMENT PLANS ARE OFTEN A RESULT OF PROTECTIONIST TRADE ARRANGEMENTS WHICH NEGATIVELY IMPACT UPON THE EXISTING FIRMS WHICH ARE OFTEN LEFT WITH VERY LITTLE RECOURSE TO ADJUST APPROPRIATELY (I.E., GUAM'S WAIVER OF VISA QUOTA FOR SWEATERS). THE EXTENT FIRM'S CURRENT PRODUCTION LEVEL IS NEAR THE ESTABLISHED 160,000 DOZEN SWEATER LEVEL. IN OUR VIEW, THE UNITED STATES TRADE REPRESENTATIVE CURRENTLY POSSESSES THE NECESSARY DECISION-MAKING AUTHORITY, AND EXERCISES, TO A CERTAIN EXTENT, SOME DISCRETIONARY LEVERAGE IN IMPLEMENTING CONDITIONAL ARRANGEMENTS FOR DISTRESSED INDUSTRIES (I.E., GUAM'S CERTIFICATION ARRANGEMENT FOR SWEATERS).

4. REGARDING THE SUBJECT OF PUBLIC AUCTION OF IMPORT QUOTAS, AND THE DESIGNATION OF ALL REVENUES FROM TARIFFS FOR TRADE ADJUSTMENT ASSISTANCE, FURTHER CLARIFICATION ON THIS MEASURE IS REQUESTED WITH RESPECT TO GUAM'S PRESENT QUOTA SITUATION. OUR IMMEDIATE CONCERN LIES IN THE AREA OF GUAM'S ONGOING TRADE PROGRAM, GENERAL HEADNOTE 3(A), WHICH ALLOWS FOR DUTY-FREE AND QUOTA-FREE ENTRY OF MANUFACTURED OR ASSEMBLED PRODUCTS THAT MUST MEET SUBSTANTIAL TRANSFORMATION CRITERIA AND HAVE MORE THAN 50 PERCENT VALUE-ADDED LOCALLY (30 PERCENT FOR SPECIFIC CATEGORICAL ITEMS MANUFACTURED ON GUAM) TO THE IMPORTED MATERIAL REQUIREMENTS. OUR CURRENT TRADE PROGRAM IS VIEWED AS AN INVESTMENT INCENTIVE. HOWEVER, IN THE PAST, GENERAL HEADNOTE 3(A) HAS BEEN SUBJECTED TO INTERIM REGULATIONS THAT HAVE AFFECTED GUAM'S TRADE ENVIRONMENT AND HAVE OFFERED NO DIRECT RECOURSE EXCEPT OPERATING UNDER THE IMPOSED RESTRICTIONS.

5. PERHAPS AN ASSESSMENT PERIOD SHOULD BE CONSIDERED AND GRANTED WITH CONDITIONS TO RECONSIDER GUAM'S INCLUSION, EXEMPTION AND TREATMENT WITH REGARD TO THE TRADE REFORM MEASURES PROPOSED. THE IMPLICATIONS OF THE EXECUTIVE BRANCH POWER STRUCTURE, PARTICULARLY THE PROPOSED TRANSFER OF DECISION MAKING AUTHORITY FROM THE PRESIDENT TO THE UNITED STATES TRADE REPRESENTATIVE, SHOULD BE CLOSELY SCRUTINIZED. OTHER RECOMMENDATIONS MAY INCLUDE ESTABLISHING MONITORING PROGRAMS, AND STRICTER COMPLIANCE STANDARDS.

IT IS EVIDENT THAT A U.S. PACIFIC TRADE POLICY STRATEGY, PARTICULARLY FOR U.S. TERRITORIES SHOULD BE ESTABLISHED. SETTING APPROPRIATE DIRECTIONAL STRATEGIES VIA THE RECOMMENDED POLICY CAN SERVE AS GUIDING BENCHMARKS THAT CAN BE CONSISTENTLY APPLIED AND WHICH FULLY EXPRESS WHAT WE PERCEIVE TO BE IN OUR BEST INTERESTS, AND NOT THE OPPOSITE.

THANK YOU FOR RECEIVING THE DEPARTMENT'S WRITTEN TESTIMONY ON THE PROPOSED TRADE REFORM MEASURES. I HOPE THAT MY COMMENTS WILL BE USEFUL IN YOUR DELIBERATIONS.

STATEMENT OF THE
HEADWEAR INSTITUTE OF AMERICA

TO THE

SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTAIVES

in opposition to
Tariff Cutting Authority

April 18, 1986

The Headwear Institute of America (HIA) is the trade association of domestic producers of cloth headwear. HIA members produce the full range of types and styles of headwear, from formal wear to promotional caps. Headwear is produced in significant volume throughout the United States in both rural and urban settings.

HIA is very much opposed to any legislative proposal that would allow the President to cut tariffs on imports of headwear. Although headwear imports are included within the coverage of the Multi-Fiber Arrangement, there has been a tremendous and unrelenting increase in headwear imports over the past several years, as selective limits on imports from certain major foreign suppliers have been slow in coming or poorly enforced. Between 1980 and 1985, imports of cotton, wool, and man-made fiber headwear rose from 6.0 million dozen to 13.4 million dozen, or by 123 percent.

This growth has allowed imports to take an estimated 50 percent of the U.S. market and has taken a severe toll on the domestic industry. Numerous companies have closed or have cut back on production, and many workers have lost their jobs. The headwear industry is under a great deal of pressure from imports and now is <u>not</u> the time to increase those pressures by cutting tariffs on imported headwear.

Duties make a substantial difference to the industry's ability to compete against low-wage imports. Cutting headwear tariffs would hurt our ability to compete against these imports. Thus, we urge the Committee not to give this authority to the President.

BEFORE THE
SUBCOMMITTEE ON TRADE
WAYS AND MEANS COMMITTEE
HOUSE OF REPRESENTATIVES

April 18, 1986

Statement of Noel Hemmendinger

I am Counsel to the law firm of Willkie Farr & Gallagher, located in the Washington office at 818 Connecticut Avenue, N.W., Washington, D. C. 20006. This statement is made on my own behalf and represents my personal opinion, based upon 30 years in the practice of trade law in Washington and 19 years before that of Government service. It does not speak for my colleagues or my clients, although several colleagues have kindly made suggestions.*/

This is the latest of many occasions in which I have expressed my views to this Committee and in other forums. Rather than repeat myself, I am attaching a chapter entitled "Shifting Sands: An Examination of the Philosophical Basis for U.S. Trade Laws," which I wrote for the volume called International Trade Policy: The Lawyer's Perspective published in 1985 by the American Bar Association Section of International Law and Practice. I request that it be made a part of my statement. I also refer to the testimony that I gave to the Trade Subcommittee on April 14, 1983. (Serial 98-14, Part 1, p. 450, copy attached.) (Omitted in this print.--Ed.)

My principal thesis runs directly counter to conventional wisdom in both the Executive Branch and the Congress. I submit (as did Peter Suchman in his testimony on April 15, 1986) that distinguishing between fair and unfair trade is not a useful way to reach international trade decisions. The distinction is largely specious and leads to results that are intel-

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*/ Willkie Farr & Gallagher is registered with the Department of Justice as the agent of several foreign principals.

lectually and internationally embarrassing. I need only cite the statements of President Reagan in connection with the decisions in the steel sector in 1984. All trade has been influenced over time by government interventions. Both dumping and subsidization are strongly influenced by exchange rates and interest rates, whose vagaries are outside the control or predictive powers of the traders.

Because we profess to limit only unfair trade, all trade that we choose to limit must be called unfair. We may be deceiving some of our own people, but we are certainly not deceiving other countries. It will serve our own interest better and encounter less foreign resentment if we stop wrapping ourselves in the flag of "fair trade," and do under Title II of the Trade Act of 1974 what we decide after mature consideration is in the national interest. This is a rational statute that stresses the condition of the U.S. domestic industry and remedies that are meaningful to help it.

I recognize that the necessity to make compensation under Article XIX of the GATT is widely regarded as an obstacle to taking action under the so-called escape clause. I think that this does not stand close examination. Those that live by legalisms must die by legalisms. But if we step aside from this path and take protective measures in response to manifest problems of our own industries, this will be recognized by other countries, as in general they have been recognized in negotiating OMA's and VRA's. If the U.S. Government concludes that this is the way to go, then negotiation of a safeguards code can be undertaken with compensation provided on a limited basis, tailored to the situation.

My second main thesis is that we have been making a mistake to turn trade cases into litigation. A corallary is that automaticity is a mistaken goal. Trade proceedings, as this committee has recognized, have become altogether too expensive and too protracted for all parties concerned. The exercise of discretion is essential to resolving major trade issues between nations. We need more discretion, not less, and more leeway to settle cases, not less.

Irrespective of the issues or interests represented, almost everyone close to the trade scene is worried that "the trade laws don't work." Some believe that Americans should have a preferred right to their own markets. Others believe in free market access when trade is fair. Sometimes stiff competition is said to be unfair competition because we cannot imagine how those foreigners can make it so cheap if they are not dumping or being subsidized.

In truth, the law and the cases have become so complicated that neither a foreign manufacturer nor his American competitor can know a priori whether there is a net subsidy or whether there is dumping. We have reached the stage where the existence of dumping is defined by the outcome of the process, not the other way around. It is hard to advise someone how to avoid dumping when the very existence of it can only be determined through technical analysis made from mounds of paper and reels of computer tape in a Department of Commerce investigation. More than that, the American competitor really does not care whether the prices of his foreign competitor are high or low in the foreign market; he is worried about prices and competition here. Thus the antidumping and countervailing duty laws are invoked by facts that have little to do with the day-to-day lives of the injured parties, and they offer relatively little prospect of solving the problems created for petitioners by foreign competition.

I realize that this year this Committee is not going to recommend repeal or radical modification of the unfair trade laws just because it has become more and more difficult to tell what is fair, what is unfair, and whether it makes a difference. No doubt we will have this distinction with us long after it has become vestigial. Nevertheless, I hope that this Committee agrees with me that the reason the trade laws don't work is that they don't directly address real problems, and the tortuous, indirect path to resolution is complex, time-consuming and unpredictable. Tinkering will do no more than provide a palliative.

I suggest that the colloquy on April 15, 1986 between Gil Kaplan, who administers the dumping and countervailing duty program in the Department of Commerce, and the respected Chairman of this Subcommittee, Mr. Gibbons, was unilluminating on both sides. Mr. Kaplan asserts that everything in the administration of the programs is "just fine," while his staff, confronting myriad questions, flounders in the effort to do justice under law within the time allowed. Petitioners and respondents alike find themselves enmeshed in a game of chance. Mr. Gibbons, I respectfully submit, was mistaken in stating that the exporters to the U.S. have no incentive to avoid dumping. The fact is, in my observation, that the dumping and countervailing duty laws are serious obstacles to trade far beyond the orders that are eventually entered. This is because it is so difficult to know ahead of time whether there is dumping or subsidization in the sense of our laws. Importers are particularly at a loss. They take the risk but lack the information. Importers are unavoidably deterred when they do not know when they contract for goods the amount of the duty that will be payable. This problem is aggravated by the practice of levying duties retroactively in countervailing duty cases. This is a change from the practice before the 1979 Act, when the countervailing duty was estimated and remained in effect until it was changed. This had at least the merit of certainty.

The foregoing indicates the undesirability of pending proposals with respect to "targeting," natural resource inputs and "downtream dumping." These are problems better dealt with under Section 201 if the U.S. industry is seriously affected.

Finally, I suggest that there should be a single cause of action for U.S. companies and industries that believe they have a good case for import protection. Rather than be forced to pick and choose among various laws, they should be able to start with an examination by the ITC of the effect of the imports complained of, leading to remedies shaped by the Executive Branch in relation to the degree and causes of injury and to international obligations, with negotiated settlement a preferred solution.

ATTACHMENT 1

INTERNATIONAL TRADE POLICY: THE LAWYER'S PERSPECTIVE

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CHAPTER 2

Shifting Sands: An Examination of the Philosophical Basis for U.S. Trade Laws

by

Noel Hemmendinger*

SYNOPSIS

§ 2.01 Introduction
§ 2.02 The Antidumping and Countervailing Duty Laws
§ 2.03 The Escape Clause
§ 2.04 Conclusion

§ 2.01 Introduction

This essay examines the philosophical basis for the principal U.S. laws governing proceedings leading to restrictions on imports: the Antidumping and Countervailing Duty Laws on the one hand, and the Escape Clause (Title II of the Trade Act of 1974) on the other. The first group are currently under reexamination in the Congress with a view to tightening enforcement and providing quicker and less expensive remedies.

My thesis is that the Antidumping Act and the Countervailing Duty Law, as represented currently in the Trade Agreements Act of 1979, are seriously defective in conception, and need to be fundamentally reexamined. This is true in two respects. First, they attempt to deal with international eco-

* Wald, Harkrader & Ross, Washington, D.C.

nomic conflicts through adversarial litigation, hobbling the essential elements of administrative discretion and negotiated solutions. Second, they assume an economic world free of governmental interventions, which has never existed, and more to the point in 1984, a world of fixed currency rates more or less rationally related to comparative advantage, which has been non-existent at least since 1971. I suggest that a variation on the Escape Clause would be the appropriate U.S. legal mechanism for addressing import trade problems.

§ 2.02 The Antidumping and Countervailing Duty Laws

The adversarial approach to the administration of the U.S. Antidumping and Countervailing Duty Laws began less than ten years ago, with the Trade Act of 1974, and was greatly intensified by the amendments introduced in the Trade Act of 1979, which provided full access to the record by attorneys for interested parties and appeals to the Court of International Trade.

There is an enormous difference between the situation in the 1950's and that in the 1980's. In the 50's, proceedings under both Acts were essentially governmental administrative investigations, in which the complainant set the wheels in motion and to some extent could look over the shoulder of the administrator, but was not a party to the proceedings. It was a governmental determination in which governmental and not private interests were paramount. Obviously, there were possibilities of abuse. Pending countervailing duty cases lay dormant in the files of the Treasury Department, for instance, with no opportunity for scrutiny of the reasons by the public or interested parties. Excesses, however, were not all against the interest of petitioners. For a period in the 70's, the enforcement of the Antidumping Act was biased by zeal to defend an overstrong dollar. Some of the regulations and practices adopted continue to bias the administration of that law.

Since the 1979 Act, the pendulum has swung to the opposite extreme, with rigid time limits, detailed standards and adversarial procedures. It is widely recognized that the cost of proceedings has become excessive, but there is not sufficient recognition of the fundamental problem, namely, that litigation is an inappropriate technique for resolving such trade issues. Unfortunately, the introduction of legal procedures has a ratchet effect; simplification thereafter is very difficult. The kind of simplification that is readily accomplished, such as eliminating interlocutory appeals, will not solve the basic dilemma posed by the adversarial procedures.

Countervailing duty cases in particular treat measures that have been adopted by foreign governments for reasons they regard as closely related to their own national interests. A mechanical, adversarial approach to the administration of such cases is offensive to the foreign governments and creates incalculable mischief in the conduct of the foreign relations of the United States. It seems obvious that such cases call for methodical examination of the facts and then a negotiation with the foreign government, either bilaterally or in a multilateral context, to see if a solution which takes full account of all the interests concerned can be achieved.

In the big cases, realities overcome the statutory obstacles. The automobile dumping cases were dismissed in 1976 by the Secretary of the Treasury without statutory authority. The massive steel cases, involving both dumping and countervailing duties, have twice been settled by ad hoc arrangements, in 1978 the trigger price mechanism and in 1982 by the U.S.-EC quantitative arrangement. Thus it has become axiomatic in trade circles that the laws against unfair competition cannot cope with the big cases. This is primarily because the magnitude of interests affected makes the defects clear. The same defects are operative in the cases in which less trade is at stake.[1]

Since most antidumping cases involve in the first instance non-governmental interests, the possibilities of solution through proceedings in which private parties are represented appear to be more meaningful. There is some merit to the basic conception that sales below the prices in the home market or major third country markets should be deterred if they cause injury to an industry of the importing country. But a law that permits no discretion to determine whether the imports are on the whole advantageous to the importing country, and which does not readily permit settlement at any stage, is not rational. This is particularly true since the con-

[1] "Big cases" have also eluded Title II of the Trade Act of 1974. Textiles, steel and autos have been handled outside that framework - specialty steel, televisions and footwear within it. I believe that the first three should have been dealt with under Title II.

cept of "unfair" prices is essentially unsound. Selling at different prices in different markets is economically sensible business conduct; deterrence should be undertaken with attention to all the circumstances and without odium.

A more fundamental defect of the mechanical adversarial approach lies in the very conception of "unfair" trade. Dumping prices, as noted above, are not inherently unfair. Subsidization is simply one of many techniques that governments have used from time immemorial to encourage domestic industries or to influence the national balance of trade. Both dumping and countervailing duty cases depend heavily on exchange rates. Export subsidies of consequence are usually related to disequilibria of national currencies, when adjustment of the exchange rate is for one reason or another not regarded as practicable. Export subsidies do not necessarily distort comparative advantage; they may as likely tend to restore it. Domestic subsidies that are redressable under the countervailing duty law punish a wide variety of interventions that governments, including the United States, have practiced for so long that the measurable effects are lost in time. To attack such measures as inherently wrong makes no sense.

Various proposals have been advanced to take countermeasures against foreign "targeting", e.g., to utilize the authority of Section 301 of the Trade Act of 1974, and to expand the scope of "bounties and grants" under the countervailing duty law. These are unfortunate approaches to the problem for the same reasons articulated above, namely, that they categorize the actions complained of as "unfair" and thereby immediately turn U.S. policy to protect its own industries into a matter of international contention.

One element of the tendency to treat unwelcome competition as "unfair" is a genuine desire, as a matter of principle and international obligations, to avoid countermeasures unless a finding of unfairness *can* be made. If, however, the results are capricious, or there is no international consensus on the alleged unfair practice, lip service to the principle accomplishes nothing and makes trouble internationally.

Some lawyers and legislators believe that the adversarial procedures are essential to the rule of law. I believe that this is a culture-bound misconception. There is a curious lack of connection between the widespread belief that we have too many lawyers and the devotion to the adversarial process. You can have a rule of law in which government administrators carry out acts of Congress and undertake proceedings at the instance of private parties without adversarial litigation and without the paraphernalia with which the 1979 Act is encumbered. If the rule of law is regarded as incompatible with administrative discretion and negotiated solutions, then it is time to reexamine the idea of the rule of law. Not only judges are capable of disinterested decisions and judges' decisions are not necessarily better than reasoned, publicly justified administrative decisions.[2]

If the whole concept of unfairness in connection with dumping and subsidies is without solid foundation, then it follows that if an American industry or economic sector regards itself as hurt by imports to the point that trade restrictions should be adopted, the examination should start with the consequences of the imports, not only to the industry involved, but also to the whole U.S. economy. It also follows that the way to negotiated solutions should be eased. Once those conclusions are drawn, however, the choices become more difficult.

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[2] I realize that this proposition could apply to many other proceedings that are subject to judicial review, not just to those under the trade laws. I do not have adequate experience of reviews under other laws to have an informed opinion. Lest I be misunderstood, I am not speaking of personal civil rights. I would not abolish *habeas corpus*. For dubious governmental policy decision, however, there are correctives other than the judiciary, notably the legislature, the fourth estate, and the polls.

§ 2.03 The Escape Clause

Logically, there would be much merit in abandoning the Antidumping and Countervailing Duty Laws and relying exclusively on Title II of the Trade Act of 1974, the so-called "Escape Clause,"[3] which deals with "fair trade." The examination begins, as it should, with the effect of imports (although the ITC is not permitted to examine the broader issue of the effect upon the whole economy, as perhaps it should). The President is instructed to consider all elements of the national interest when granting or denying relief.

If the President decides that relief is appropriate, he may negotiate agreements with the supplying countries. There is no judicial review, except for egregious departure from the constitutional and statutory mandates (as for governmental acts in general).

There are both principled and practical objections to this course. The main objection of principle is that abandonment of the conception of unfairness would set back the efforts to introduce the rule of law over international trade, which the GATT and the codes on subsidization and dumping represent. Incomplete and often disregarded as it is, that body of international agreements represents a major achievement. It has helped many governments to defend the public interest in unrestricted trade against the pressures of various economic sectors for restriction. In short, if the distinction between "fair" and "unfair" trade is largely myth, it may nevertheless

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[3] Section 201 *et seq.* of the Trade Act of 1974, Pub. L. 93-618, 88 Stat. 2011, 19 U.S.C. § 2251 *et seq.* The expression "escape clause" refers to Article XIX of the GATT, providing that a party may suspend an obligation, including tariff concessions, if increased imports cause or threaten serious injury to domestic producers. Title II of the Trade Act of 1974 provides the domestic U.S. procedure for action taken under Article XIX internationally. The relationship, however, between Title II and Article XIX is not automatic — actions under Title II need not be implemented pursuant to Article XIX, and actions implemented internationally under Article XIX would not have to have been taken pursuant to Title II. For instance, a legislative action or executive action not taken under Title II could be implemented internationally under Article XIX if the requisite findings were made.

be a useful myth. Logically, again, a government should not need to rely on the existence of international agreements to make decisions that are in its national interest, but given the interplay of forces in a political society, there is no denying that it helps.

Specifically, reliance on Title II presents the dilemma of adopting a remedy that is not related to the degree of contribution to the injury from the various national sources, or of departing from MFN with harm to the fabric of international agreements. Such departure from MFN is authorized by Section 203(k)(1) of the Trade Act of 1974, but the authority has never been used. In specific cases, the utilization of orderly marketing agreements and cleverly tailored import restrictions may enable the President to walk the tightrope, but the dilemma is nonetheless real.

Reliance on Title II presents the additional problem of compensation under Article XIX of the GATT. Supplying countries that entered into OMA's have waived or not pressed such claims, and where pursued, such claims against the U.S. have normally been settled amicably. That might not always be true, however.[4]

Practically, there is no way in the near future that Congress, with its constituencies of industries and labor beset by import competition, is likely to permit all decisions whether to restrict imports to be made solely by the President. The current is running in precisely the opposite direction. Since conventional wisdom endorses restrictions on "unfair" trade, and condemns restrictions on "fair" trade, incredible contortions

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[4] As this essay is edited (January 1984) the E.C. is reacting strongly to the decision of the President under Title II on specialty steel, and has announced compensatory duty increases on unrelated U.S. products. The E.C. thinks the restrictions are not justified under the standards of Article XIX and should not be taken on top of pending dumping and countervailing duty cases. No doubt E.C. feeling is exacerbated by unrelated trade controversies, notably on agricultural products. E.C. sentiments on specialty steel are less violent, however, than when they faced massive dumping and countervailing duty cases on carbon steel in 1982.

are made to bring that which it is desired to restrict within the category of "unfair" — notably, at this writing, so-called "targeting."

§ 2.04 Conclusion

The foregoing discussion assumes that there is a consensus that a policy of qualified free trade is in the U.S. national interest. There has been such a consensus since 1935, but in what shape it will survive the current issues over currency disequilibria, world overcapacity in basic industries, and painful structural adjustments remains to be seen.

These crises increase the urgency of clear thinking about the contradictions and dilemmas just discussed. It is inevitable that policy compromises will occur, because a simple course of neither free trade nor protectionism will emerge. We have had compromises all along, and will continue to have them.

What is urgent is that in hammering out the compromises in U.S. trade policy, we not needlessly offend other nations and complicate our problems by litigation over "unfair" trade. To return to the theme stated at the opening of this essay, modification of the Antidumping and Countervailing Duty Laws requires more, not less administrative discretion, more administrative finality, less judicial review, and most of all, more negotiated solutions. Changes in the law that do not move in these directions will be counterproductive.

In the long run, it makes sense to consider a single cause of action modeled upon Title II of the 1974 Act,[5] in which all trade restriction cases would start with a petition to the ITC; if appropriate, the Executive would undertake foreign investigations; and the President would make final decisions (including international negotiations). This could be done under existing substantive standards, or those standards could be altered as policy considerations might dictate. The problems of balancing various national interests and of strengthening international agreements would unavoidably remain, but they could be addressed more rationally.

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[5] The filing of Title II cases on footwear, carbon steel, and copper during the week of January 23, 1984 may indicate a major revival of interest in Title II, or it may prove to be a one-year phenomenon.

STATEMENT OF RONALD L. DANIELIAN

PRESIDENT, INTERNATIONAL ECONOMIC POLICY ASSOCIATION

TO THE

HOUSE WAYS & MEANS COMMITTEE

SUBCOMMITTEE ON TRADE

U.S. HOUSE OF REPRESENTATIVES

April 18, 1986

Mr. Chairman:

The International Economic Policy Association -- established in 1957 -- is the first nonprofit organization to concentrate solely on U.S. public policy issues in the international economic arena. These have included international trade, investment, taxation, raw materials and exchange rate policy questions as well as international monetary issues. We have published several books on the U.S. balance of payments, one on U. S. Foreign Economic Strategy for the Eighties, and contributed to Raw Materials and Foreign Policy.

Mr. Chairman, this nation is in trouble. We are running serious balance of payments and trade deficits, building debts abroad which are future claims on U.S. resources. Our domestic budget deficit encourages current consumption through the borrowing of foreign funds. We are borrowing from foreigners and mortgaging the future, building up liabilities abroad and bringing higher relative interest rates that can affect the dollar's value. It is extremely important to reduce this deficit and continue to adjust the dollar's value, but that would not be a cure-all. These problems transcend the era of bloated budget deficits, and currency swings are responsible for about $62 billion of our $124.3 billion (BOP) trade deficit. Thus, we still face nontariff barriers abroad which must be eliminated if we are to preserve an open trading environment.

I. A Payments Crisis & Trade Flows

The United States faces a crisis in its ability to earn foreign exchange and pay its way in the world today. Except for the recession year of 1975, we have suffered sizable trade deficits since 1971, and those deficits have mushroomed in the 1980s to $124 billion ($149.6 billion on a census basis).

Our investment and services account can no longer overcome our deficit in trade. Thus, the United States current account, measuring all current international transactions, was in deficit by $117.6 billion in 1985.[1] This, too, is not a recent phenomenon. In fact, the United States current account on actual transactions (excluding the overstatement of net reinvested earnings) has been in deficit since 1968 (excluding the recession year of 1975). In the past, however, our current account deficits were manageable, ranging between $1 billion and $9 billion. They could be financed by reasonable inflows of capital from overseas and in aggregate terms until about the mid-1970s, the cumulative balance was positive.

For the current account, we were able to cover our imports of goods and the costs of military expenditures abroad through the sale of U.S. services, the return on U.S. foreign assets in the form of repatriated income from U.S. direct investors overseas, and small manageable inflows of foreign capital. Starting in 1977, however, the hemorrhage both in trade and our current account was too severe for our export earnings or return on investments and services sales abroad to balance out -- even over time. We therefore stand today as one of the world's largest debtor nations -- exceeding in one year the total debt of Mexico or Brazil. Our ability to spend abroad relies on the inflow of foreign funds, attracted by today's higher real interest rates. Thus, to pay for military

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[1] $127 billion (est.) on actual transactions.

and aid expenditures abroad and to allow foreign goods unrestricted access to the U.S. market without the quid pro quo of open access for our goods, we must borrow money.

It must be noted that excess U.S. dollar liabilities abroad persisted in earlier years under the former measures of our balance of payments. These measures included the liquidity balance, the official settlements balance, and the basic balance used at various times up to 1972. No matter how the definitions have changed, we have had a deficit since the 1950s, and today we continue to increase dollar liabilities abroad.[2]

The nature of the U.S. trading relationships has changed over the years, and our flow of trade has risen faster with new areas such as Asia than with previous markets such as Europe. And our overall trade accounts have shifted from near balance or positive to deficits with all major areas. Table I shows our deficits with various regions. In major product categories, except for agriculture, the U.S. is suffering from ever-increasing trade deficits or a substantially reduced surplus. And even in agriculture our surplus has slipped as U.S. policy mistakes such as export embargoes have allowed competitors to garner a significant share of what used to be our primary foreign markets. Table II-(a-e) shows the balance in major product categories since 1957. The same pattern is repeating on the services account, where our surplus is being reduced. Table III shows the real current account position and overall trade position from 1960-1985. In the last decade, despite continual drives to open up foreign markets, only in the depths of the recession in 1975 did the United States have a real surplus on the current account.

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[2] The United States Balance of Payments: From Crisis to Controversy (1972); The United States Balance of Payments: A Reappraisal (1968); The United States Balance of Payments: An Appraisal of the U.S. Economic Strategy (1966), International Economic Policy Association, Washington, D. C.

The origins of this deficit go beyond our extremely high budget deficits of today. Lowering the budget deficit will have a positive effect on the current account, but it will not solve our problem.

II. A Question of Debt or Equity

The 1985 international report of the President's Council of Economic Advisers did not view the current account deficit with alarm. The report stated that the "deficit is not necessarily a negative factor for the economy as a whole. A current account deficit merely implies that...U.S. residents are purchasing more goods and services than they are now producing. Its counterpart is a capital account surplus which measures the net claims on U.S. residents that foreign residents have accepted in payment. Thus, net capital inflow provides the financing for an excess of current expenditure over output." This analysis was repeated in a slightly different form in the 1986 report.

This view is an assets and liabilities account of our international transactions. Just as with any corporation, assets and liabilities must balance out. But one can pick American companies that are in difficult times, earning no profits (possibly paying dividends with borrowed funds), whose assets and liabilities balance. The key flaw in the statement is the implied assumption that "net claims" can safely keep on rising, in effect reducing stockholders' equity. In the 1986 report, when talking about the LDCs, the Council recognizes this flaw by stating:

> "Not surprisingly, debt-servicing difficulties are associated with countries that run large and persistent current account deficits that need to be financed by large and persistent net external borrowing. Loss of confidence in a country's creditworthiness might be

expected to affect internal as well as external creditors, leading to a flight of domestic capital."

As a nation, we have switched in the last decade from the healthy side of the assets and liabilities statement to the unhealthy side where we sustain our growth on borrowed funds, building up foreign claims against the United States. This is no different from the obligations deriving from our domestic budget deficit that future generations must ultimately pay. The United States must be prepared in the future to pay off its international claims. As interest charges mount and we live on borrowed funds rather than building future earning assets, there will be less and less for growth. When the burden reaches its peak, gross savings in the economy will not meet investment needs, higher relative interest rates are needed to attract foreign funds, and recession follows. If the dollar also drops in value, there will ultimately be more inflation. We could face October 1979 all over again, when interest rates rose as the Federal Reserve increased the discount rate twice in one month and credit controls were applied. The special circumstance of present oil prices gives us only temporary respite.

In classical economic terms, economies pay off international debts by reducing domestic consumption to save productive capacity for export earnings - foreign exchange. Countries in balance of payments deficit needed to reduce domestic economic activity relative to the rest of the world. Major domestic adjustments similar to the IMF prescriptions for the debt-ridden LDCs are most appropriate. Politically, however, this committee may not appreciate this scenario.

III. Troubles by Example

Growing debt and balance of payments crises forced the British into their stop-go economic policies of the late sixties and early seventies. Most important, however, were

the strategic implications of the British problems. The growth of foreign income from earning assets abroad filled in for the lack of foreign exchange created by constant trade and services deficits in the 19th and first part of the 20th century, and supplied most of the surpluses for Britain's foreign activities.[3] But the forced sale of overseas private investments to meet war obligations cut earnings. This plus a substantial rise in military expenditures[4] ultimately led to chronic debt and overall balance of payments problems after World War II.

The severity of the British payments crisis reached a peak toward the end of the 1960s when the pound became one of the "sick men" of Europe. In 1967, sterling was devalued by 14.3 percent, yet the crisis persisted. Later, world bankers met in Basel to agree on a sterling guarantee package. The massive sterling problems and the stop-go economic policies tried as a cure finally led to a reassessment of England's ability to continue financing overseas activities. One casualty was overseas defense expenditures, which could no longer be sustained at previous levels. Britain pulled back from its "East of Suez" military obligations (especially the Middle East and Indian Ocean) in part to save the foreign exchange costs which were no longer sustainable, and in part to satisfy the political orientation of the Labor government.

IV. Macro Effects

We cannot live on borrowed funds indefinitely. The short term cost is higher relative interest rates (to attract foreign funds) and loss of jobs and investment as the dollar remains overvalued and other currencies are undervalued. Higher interest rates have swelled the value of the dollar and

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[3] See: Economic Elements of the Pax Britannica, Albert Imiah, Harvard University Press, Cambridge, 1958.

[4] Britain's Economic Prospects, The Brookings Institution, Richard Caves and Associates, 1968.

U.S. productivity gains are not able to overcome the undervaluation of other currencies, giving foreign goods an advantage and increasing our trade deficit.

Under normal circumstances, the U.S. exchange rate should be depreciating slowly so that we can overcome our payments imbalance. But the forced action of finance ministers in September 1985 to bring the dollar down is evidence that so-called automatic corrections are not made in currency values. And the history of dollar movements shows that the corrections either do not go far enough or do not last long enough. Thus, world trade is no longer being conducted on the basis of comparative advantage, causing a distinct inefficiency in the flow of resources on a global basis.

As an example, the United States has always been the most efficient agricultural nation. At one time our agricultural products could be produced and sold for less than half the cost of comparable products in other countries. That is no longer the case. We have reached the point where U.S. agricultural companies such as Cargill have even considered importing grains into the United States because in dollar terms it would be cheaper than buying in the U.S. farm belt! In the past, the European Common Agricultural Policy subsidized the exports of member countries up to 50 percent of the cost of production. But because of the strength of the dollar in foreign exchange terms, U.S. agricultural products are so expensive now that there is much less of a subsidy element in European exports to third country markets. This is true despite the fact that in local terms it can cost twice as much to produce agricultural products in Europe as it does in the United States.

In the export of goods, the United States supplied over four-fifths of the commercial aircraft in the world, but we no longer hold that position because of severe competition from

European and other manufacturing bases. A major factor in the continuing loss of market share in this product was the substantial overvaluation of the dollar up to September 1985. Pan American World Airways, for instance broke a long association with the Boeing Aircraft Company to buy up to 28 European-manufactured airbuses worth approximately $1 billion. This was despite the fact that its system was geared, from mechanics to spare parts, to the Boeing aircraft. In foreign exchange terms, the 40 percent overvaluation of the dollar at the time of the sale had a significant impact on bringing down the dollar cost of that equipment purchase. Since the export credit agencies in Europe assume the risk for exchange rate fluctuations without charging a premium for airbus sales financed in dollars, a potential $300-400 million savings can be passed on to the buyer. This is a tremendous price advantage for an American airframe manufacturer to overcome.

V. A Condition, Not a Theory

The use of classical theory to frame a policy of exchange rates that self-equilibrate international payments has been misplaced. It was first expected that floating exchange rates would free national economic policies from exchange rate concerns. By automatically adjusting, it was felt, the market would remove the need for governments to defend a fixed rate and give nations greater freedom to adopt macroeconomic policies in pursuit of purely domestic targets for employment and growth. The exact opposite occurred.

Fourteen painful years of strains in the international economy, loss of market shares for the United States, and reduced potential GNP growth have shown that we were right when we stated in 1971 that "There is now a fad of urging flexible exchange rates or revaluation of other currencies, that is to say, a de facto devaluation of the dollar as a solution to American balance of payments deficits. The belief that flexible exchange rates or revaluation of other

currencies will turn the trick on our commercial transactions is a hangover from classical international trade theory. Unfortunately, this is not applicable to a world where the classical model of competition, free trade, and mobility of capital and labor simply does not apply."[5]

For floating rates to work as envisioned, major nations would have to get together and adjust relative fiscal and monetary policies for an appropriate mix. Some nations would have to be willing to give up employment or growth and others would have to allow more inflation. Some would have to give up trade earnings so others could gain them. It is extremely difficult to imagine countries of vastly different political, social, or economic persuasion voluntarily agreeing to such targets on a yearly basis. And it is even more difficult to see any surplus developed nation or newly industrialized nation giving up substantial export-trade gains of the last few years.

The same malady afflicts the current fad about target zones or central bank intervention to force rates down. Unless the underlying domestic economic policies of trading nations are changed in concert, currency manipulation is not a long-term solution. While the United States cannot hope to solve its trade problems without bringing down the value of the dollar, doing so will not correct our trade deficit unless dollar values drop well below 1979 levels. That would be 25-35 percent below today's levels, and foreign nations simply will not let that happen.

What is missing in all of our theories is realism about what can be done jointly and how far other nations will allow the dollar to drop for the United States to gain more of a trade advantage. To concentrate on exchange rates and the

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[5]May 1971 IEPA statement before the Senate Finance Committee.

hope that real adjustments here will solve the problem is a clever way of postponing the hard decisions that have to be made. New policies are needed to extricate ourselves from this dilemma; a new direction is appropriate. The real question is, how do you make the system adjust for different national policy complexions without resorting to pure protectionism?

VI. Changing Times

The United States has suffered from a delayed perception of basic changes in world economic forces. We are no longer the sole economic giant in the world, and we cannot act as if the rest of the world will automatically follow us. When the General Agreement on Tariffs and Trade was negotiated in 1948, it was biased in favor of countries needing our help; for instance, it included a grandfather clause continuing the British Commonwealth preference system, and it authorized common markets and free trade areas in the interest of Western European unity, even though these are clear denials of the unconditional, most-favored-nation principle inherent in the document. The GATT is a static document which has bound the United States as much as it has helped us. For instance, no one envisioned that the EEC economic union would effectively stretch from Israel to Spain and from Norway to Algeria. But the exception in GATT to MFN treatment for common markets allows the sacrifice of our agricultural interests to the high European levies, again causing us problems with the accession of Portugal and Spain.

During successive rounds of negotiations going back to the 1950s, we adhered to the principle of MFN. We thus allowed third parties, who were emerging industrial powers, to obtain favorable tariff rates on imports into the United States without necessarily giving us a reciprocal bargain. Our objectives then leaned toward shaping a healthier economic world and helping others because we could afford to at minimal U.S. cost.

When world levels on automobile tariffs were negotiated under the Kennedy Round in 1968, the United States ultimately agreed to a low duty rate of about two percent. The Japanese were able to receive the same low dutiable rate under MFN while their rates on automobile imports remained high, and while they denied or restricted the ability of U.S. automobile firms to invest in Japan. Of course, Japan was not then a significant manufacturer of autos -- Europe was the second largest producer, and there was a complementary relationship between trade and investment as both were freely allowed across the Atlantic. Yet, as markets changed, the static agreement made under past conditions did not, and there was no opportunity for a complementary trade and investment relationship across the Pacific. This relationship is a key to our trade and payments imbalance with Japan today.

In 1968, we allowed negotiations under the Kennedy Round to be completed in the nonagricultural sector alone -- a sector in which the United States had been in a trade deficit. But we set aside discussions on agriculture, then our primary breadwinner. In the late 1970s, we agreed to lower our dutiable rates on telecommunications equipment from Canada to a two percent level, while the Canadians retained a 17 percent duty for our shipments to them. And in 1979, under the Trade Agreements Act of 1979, the U.S. Congress sanctioned for the first time in law the 1960 interpretation that U.S. direct income taxes are not rebatable on exports. The world had changed considerably but our negotiators stuck to old beliefs. Nevertheless, the United States continued to protest that such tax rebates lead to a less than equal opportunity to compete, especially in third country markets. Our DISC, now the FSC, was an effort to equalize this playing field.

We have also reduced our tariff rates in certain sectors over the years only to see foreign nations such as Japan maintain higher rates and other impediments to build a world

class industry behind the barrier. Aluminum is a good example here, as Japan has used high tariffs and selected rebates to Japanese producers to build a competitor to U.S. interests.

The times have changed and the United States does not have an economic surplus in foreign exchange terms with which to grant unilateral concessions to foreign nations. We cannot afford to give up access to our markets for some undefined objective without making sure that such access is fully reciprocal. The expenditure of foreign exchange for activities that do not bring an economic return can lead to an increase in our international payments deficit. For instance, there are times when we should not be giving aid in money terms. Rather, the United States should supply to the world real (hard goods) resources, of which we have an abundance, considering our present excess capacity. We can afford to give tractors and pay for U.S. engineers or other U.S. services to be performed abroad as a gesture of our compassion and aid. Or we can afford to give surplus food to those in need. We cannot afford to give dollars freely, since we are one of the world's largest debtor nations. To give we must borrow.

VII. Bilateral Balances

On a commercial basis, we have had persistent trade deficits since 1971 (in 1977, they reached crisis proportions) and current account deficits since 1968 (see Table III). We are transferring purchasing power to foreigners, in essence, giving future claims to U.S. resources.

Table IV (a & b) shows our balances with major trading partners. Excluded from these tables is Japan which I shall treat separately. As can be seen, our accounts with these areas have varied between surplus and deficit, until 1983 when we began to run trade and/or current account deficits with all

of our major trading areas. Moreover, while our problem in general is serious and our accounts have deteriorated, our situation is even more critical with Japan. The recent talk that "Japan isn't the only problem," is true but it is a smokescreen that clouds the problem.

With Canada, for instance, the United States had a $9.3 billion trade deficit in 1983, but we still had a small current account surplus. For Germany alone, the special problem of our NATO expenditures there accounts, at times, for 75 percent of our current account deficit. This is an issue that must be considered separately.

Because of the tremendous rise in the value of the dollar since 1981 and the decline of other currencies, the final figures for 1985 showed a further massive deterioration in our accounts despite the decline in the dollar since February and the September finance ministers agreement. Yet this outcome is in keeping with studies of the Federal Reserve Bank of New York showing that we seem to lose more with an appreciation than we gain by depreciation.

Historically, in those times when the dollar was depreciating substantially by up to 30 percent, such as between 1978 and 1980, our trade and/or current accounts did not self-correct. Nevertheless, with some of our trading partners, we were able to sell more and sometimes improve our foreign exchange earnings.[6] This, however, has not been true

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[6]A depreciation can help but is muted by the "J" curve lag in trade effects, and because some countries peg their currencies to float with or below the dollar. About 65 percent of our trade is with such currencies; thus, less benefit would accrue to the U.S. from these nations.

with regard to Japan. Japan represents a different and unique case which cannot be hidden by costly Japanese-funded reports or by the fact that today we have substantial deficits with our other trading partners.

Table V shows our trade and current account deficits with Japan since 1960. As can be clearly seen, our Japanese problem is not of current origin. We have had a growing trade and current account deficit with Japan in every year since 1965. As we enter our third decade of problems with this country, it is difficult to fall back on the excuse that U.S. trade problems go beyond Japan...or that all we need is more time. The anomaly with Japan is that past U.S. trade and current accounts have not responded to what theory and common sense tell us should happen when one economy grows faster than another and when one currency depreciates in value against another.

Many have argued that our trade deficit will eventually improve as rates of economic expansion in Japan increase. If the dollar depreciates, our trade should also improve with Japan. The facts of past U.S.-Japanese trade simply do not support the normal economic principle that aggregate internal demand or a depreciation of the dollar will be a prime mover in increasing trade and correcting our deficit with that country. Continual forced change may be one way of making corrections, but I fear the process is lengthy enough to produce only small results.

For instance, in every year since 1973, the growth in Japanese gross domestic product (a good indicator of internal aggregate demand) has exceeded that of the United States. In the years 1978 through 1980, the dollar was depreciating by 30 percent, which should have given us an additional trade advantage, and Japanese growth significantly outperformed that of the United States. Thus, we should have encountered

substantial increased trade opportunities, leading to a significant correction in our trade balance with Japan. Instead, our deficit with Japan hovered between $8.6 billion and $11.6 billion. In 1979, real growth in Japanese GDP was 5.1 percent versus 2.3 percent in the United States, and in 1980 it was 4.9 percent versus -0.2 percent in the U.S., yet our trade deficit increased from $8.6 billion to $10.4 billion. In 1981, Japan grew one full percentage point faster than the United States, while our trade deficit increased from $10.4 billion to $15.8 billion. And in 1982, although Japan grew 3.2 percent and we were in the throes of a recession (a 2.4 percent decline), our trade deficit increased by another $1 billion! This performance probably reflects the unrealistic strengthening of the U.S. dollar and the corresponding weakness of the Japanese yen; but throughout the last decade, more than currency swings or domestic growth would have been necessary to remedy the "Japan problem."

To attempt an attack on this problem through endless negotiations raises the level of rhetoric and embroils the U.S. in the internal domestic operations of the Japanese economy. It takes so long to get true change and movement that when a change finally occurs, the U.S. has new and more pressing problems to face. It's like painting a moving train. Now, the Haruo Maekawa Commission has proposed revolutionary changes in the domestic Japanese economy replete with a promotion monitoring headquarters. If we wait for the results of this to give us some trade "dividends," it may be too late for a lot of U.S. industries. In fact, it is reported that the Japanese have obtained a Reagan acknowledgement that the yen at about 180 to the dollar is the correct rate. So, what they give with one hand, they take away with the other!

I maintain that U.S. policies must change to reflect these facts because the political and employment-related impact on America amplifies protectionist sentiments.

VIII. Jobs and the Political Impact of Trade in the "Rust Belt"

Since January 1980, 1.5 million jobs have been lost in the manufacturing sector. During this period we have faced cumulative trade deficits of $384 billion. Table VI shows the relationship between job loss and imports. Although it is difficult to prove in every case that the job loss is a direct result of import penetration instead of poor management or high labor costs, the nexus is intuitively apparent. Many industries that rely heavily on their foreign sales have also faced declining employment. Caterpillar, for example, reduced employment in export related sales by 50 percent between 1981 and 1983, as those sales declined by 50 percent.

IX. Overall Employment in America

By February 1986, manufacturing employment had decreased to the level of 1970, while jobs in the service industries increased by 27 million over the same period -- an amount greater than total manufacturing employment. In spite of the tremendous gains in service employment (to 75 percent of total employment in 1985), the service sector's share of GNP grew from 42 percent in 1970 to only 48 percent in 1985, while the goods sector's share dropped from 48 to 42 percent. The remaining 10 percent of GNP was provided by construction and mining, the majority of which is dependent upon the goods sector.

The service sector has been unable to provide a portion of GNP commensurate with its share of employment. In other words, service jobs are not, on the average, as productive as those in manufacturing. This fact helps to explain why the

economy grew at an annual rate of only 2.2 percent in 1985 (constant 1982 dollars), even though 2.6 million jobs were created in the service-producing industries.

In addition, the idea that services are less prone to import competition is changing as more foreign firms enter into such areas as banking and insurance in the United States. Our service exports, on the other hand, are blocked by the pervasive barriers to service trade in other countries, particularly in the developing countries. In the case of insurance, 85 countries restrict U.S. companies with 26 of those being complete barriers.

Finally, almost all components of the service sector are dependent to some extent on manufacturing. There is a good chance that, following a lag, service jobs will start to decrease as manufacturing jobs have done.

The six so-called "rust belt" states of Illinois, Indiana, Michigan, Ohio, Pennsylvania and Wisconsin have been hardest hit by a significant reduction in employment. This reduction has occurred in manufacturing, primary metal industries, fabricated metal products, farm and garden machinery, construction and related machinery, electrical and electronic equipment, and transportation equipment including motor vehicles and equipment. These are the precise areas of greatest competition with imports and these six states are extremely important for the impact of their electoral vote (see Table VII).

The six states together have 115 electoral votes or 23.3 percent of the total. One conclusion drawn from voting patterns in these six states over the past forty years indicates strongly that the Democratic presidential candidate must win in three of the six states to win the Presidency. Conversely, the Republicans must make sure that a Democrat

will not win at least three of the six states. The extent to which the economic downturn in the rust belt caused by severe unemployment and layoffs because of import penetration affects voters' attitudes toward the two parties could very well determine the outcome of the presidential election in 1988. Regardless of the new Republican strength from population shifts to the south and west, the rust belt states are important for any presidential candidate. This is the conjuncture of politics and economics, international trade and congressional action.

X. A New Beginning

We can find our way back to a policy of expanding rather than restricting the opportunities for trade by regaining control of access to the U.S. market and reestablishing respect for the principles of MFN, national and reciprocal treatment. Access to our markets must be conditional on adherence to these principles by other countries, and the principles should not be applied merely to trade movements. They must encompass investments, repatriation of earnings, industrial property rights, and any other considerations of economic value. Economic progress is indivisible; trade, investment, property rights, travel, and other components of the balance of payments are all interdependent and a misalignment in one leads to problems in others.

We must realize that today's world is not that of the fifties and sixties. As just one of the major international economic players, the United States should cease to act as if its size and status demand a higher standard of self-sacrifice than any other major country accepts. Whatever validity to this notion might remain, the special conditions that prevailed after World War II and Korea have been corrected in part by America's generosity. Having met the special obligations imposed by our relative affluence at that time,

the United States should begin to act as coequal with other countries now that we have major domestic priorities and problems of our own. And while we must continue to carry out our basic responsibilities, we must also insist on a more open and reciprocal treatment in our future economic relationships.

X. A Shift in Priorities

A shift is needed in U.S. Government priorities from exclusive reliance on reducing the budget deficit to equal emphasis on solving our balance of payments problems. The current payments imbalance has been with us for almost two decades. While the tremendous inflow of capital has raised the value of the dollar and hurt U.S. exports, a reduction in the value of the dollar by itself will not bring us near to balance in our trading relationships. Import penetration will still be a problem and basic industries, those required for national security purposes, and high-technology business still remain in jeopardy when foreign market opportunities are closed to them.

Thus trade and balance of payments problems must be elevated to the highest levels and all U.S. Government policies should be evaluated in the light of their effect on our international accounts. For instance, U.S. tax policy must be shaped so as not to disadvantage the earning of foreign exchange, reduce the repatriation of funds or create a bias against exports. Yet, government agencies dealing with international trade problems were not asked for their advice in shaping the initial tax proposals. This is a policy failing which we cannot afford in the future.

The Government should consider reestablishing a separate Council on International Economic Policy or other international economic policy group within the White House headed by an individual with access to the President through the Chief of Staff or otherwise, so that international consider-

ations can rest on their own and not under domestic or national security policy. But much more needs to be done to focus our policies in this new era.

In order to make the necessary adjustments toward an open, efficient, trading system, we should follow the principles laid down under Section A below. These principles have long been supported by IEPA, and for the most part are not significant departures from accepted rules or practices today. Most were aired before the Senate Finace Committee in testimony on April 23, 1985. Under Section B, we propose some principles that should be considered especially if imbalances and severe dislocations persist. These proposals may be legal remedies accepted by the trading community, or some may be more controversial, but they are advanced in an effort to forestall purely protectionist reactions.

XII. Principles to be Followed

A. The United States must adopt a conditional most favored nation policy that rests on reciprocity and national treatment in both trade and investments. Insisting upon true respect for the principles of national, reciprocal, and MFN treatment, we should condition future access to our markets on adherence in practice to these principles by our trading partners. Third countries that do not agree to the stipulations between two trading partners should not necessarily benefit to the same degree from the lowering of barriers between the two primary parties. The effort here is to structure our negotiations along the lines of the Tokyo Round MTN government procurement code, subsidies code, and other agreements. Only the countries that agree to codes get the benefits of those codes.

B. There should be an immediate agreement not to use voluntary quotas for controlling imports in crisis situations. Temporary added tariff rates should be the preferred method when using voluntary restraints agreed to in bilateral negotiations leading to orderly marketing agreements. Strict adherence to quotas does not allow the market mechanism to operate and in fact can enrich the foreign exporter at the expense of the U.S. consumer and American business. This was the case in the automobile quotas which swelled the profits of Japanese companies by $824 million, but American companies' profits by only $115 million. When a tariff is applied, the economic rent of higher prices is collected by the U.S. Government, not by the foreign manufacturer. If the foreign manufacturer wishes to maintain his market share or a new entrant wishes to begin operations here, the price effects of supply and demand can operate under tariffs but not under a quota. (If quotas are going to be continued, they should at least be auctioned off so that some of the economic rent accrues to the U.S. Government.)

C. Quotas should not be an option in 201 escape clause awards. For the above reasons, tariffs should be the preferred method of relief.

D. The United States should avoid using economic sanctions and should make export controls less cumbersome. Both serve to undermine the reliability of U.S. producers as suppliers of goods and services, and both are considered counterproductive or inefficient when overzealously applied.

E. The United States must meet all foreign export financing subsidies against competing U.S. export products where necessary in order to eliminate these measures. The availability of equal financing for U.S. products is a deterrent. While we should never strike first in providing outright subsidies to exports, we must always act in defense

so that others can be persuaded of the futility of such practices. A limited $300 million pool to solve a $150 billion trade deficit is not adequate.

F. The United States should initiate bilateral and multilateral agreements to phase out trade distorting subsidies and, where agreement cannot be reached, take prompt and effective action on the subsidized imports. In this effort, political considerations should not be used to our disadvantage in balancing economic problems and a clearly defined, short-term timetable for negotiations must be set.

G. Respect for intellectual property rights should be buttressed with bilateral and multilateral agreements. We should not offer a country violating this principle automatic safeguards here in the United States. Ever since the establishment of the Republic, Congress has been resolute in protecting property rights as they apply to our own jurisdiction. Ownership of patents should be defended because these technical frontiers may prove more important to our long-range welfare than physical plants. Other countries should be encouraged to accept these principles by setting standards in trade legislation that authorizes our government's trade negotiations. As one of the conditions of granting most favored nation access to our markets, and application of an injury test in International Trade Commission cases, we should adhere to the principle of protection or compensation for industrial property rights. This includes patents, trademarks and proprietary technology or processes.

H. Performance requirements must be avoided on investments and we must enter negotiations immediately to eliminate such requirements on U.S. foreign investments. Some nations accept investment only under the strict condition that a certain percentage of the output must be exported. This and other requirements can skew international trading relationships. The degree of access to the U.S. market should reflect

the existence of such requirements and should be part of our negotiating process. Where such requirements involve another government's promise to subsidize production or close local markets to competition, then the performance requirements are no different than subsidies which should be actionable under international trade laws including countervailing duty and Section 301 cases.

I. Domestic adjustment assistance to U.S. firms and workers adversely affected by import competition must be reshaped into a coordinated program to help firms redefine their operations and help workers retrain for marketable skills. These programs should be combined with unemployment payments where appropriate and should be funded with the tariff collections from items B and C above.

J. The United States should initiate discussions within GATT for revising Article XVI adopted in 1955 dealing with the question of border tax adjustments for exports. In 1960, the United States agreed to a clarification and adopted a Working Party Report which listed a number of practices construed to be subsidies. We caught ourselves in the trap of allowing Europe to rebate on export and charge on import their value added tax while we were denied the ability to do the same with our indirect income taxes. Value added taxes on many products now range from 12 to 23 percent.

K. The United States must maintain tax neutrality and must not make any changes in its domestic tax policies that disadvantage the earning of foreign exchange, reduce the repatriation of funds, or create a bias against exports. Tax reform and true simplification are sorely needed, but the current tax reform proposals are not balanced in their treatment of foreign-source income, and do not represent a simplification. Neutrality in taxing foreign operations must recognize local foreign competition. The overall method for

computing foreign tax credits and the allocation rules for foreign sales income should be retained to achieve this end and to mitigate our present export crisis. The time is past when the United States should arbitrarily base its tax system without regard to foreign practices or to our obligations under tax treaties.

Changing the research and development tax credit would discourage domestic R&D while allocating R&D expenses to foreign-source income could push R&D facilities offshore. Thus, value added from the application of domestic R&D is whittled away by an offshore bias. R&D spending is vital to our national security and to our industrial competitiveness.

Finally, when there is a disparity between U.S. and foreign tax codes, and between U.S. tax treatment of foreign and domestic income, a serious problem arises for U.S. mining and material resources investment. We risk disadvantaging domestic activity in this area and reducing the foreign earnings of such activities when carried on as a branch operation. The United States can no longer set its tax policies in an international vacuum.

L. GATT is a static archaic document which must be revised. Many features of GATT are cumbersome or unworkable in today's new world. The interpretation of Article XVI on tax rebates needs reconsideration, Article XII on balance of payments needs modernization, those articles which appear to limit corrective action to quantitative restrictions must be amended to allow, under the rules, for the use of tariffs. The Congress can insist on modernizing GATT since the General Agreement is an executive agreement and not a treaty previously ratified by the Congress.

XIII. Principles to be Considered

A. Countries with appreciating currencies should be able to use exchange-adjusted tariffs. To maintain a competitive balance in trade flows based on product quality and actual costs when our currency appreciates rapidly from its purchasing power parity trend and creates a balance of payments disequilibrium, the United States should use Article XXIII of GATT on nullification and impairment. In our case, a large currency overvaluation effectively negates any tariff concessions received. Accordingly, tariff levels should be adjusted upward. Without close coordination of fiscal and monetary policies among all industrial nations, it will be impossible for floating exchange rates to balance international trade flows and eliminate the arbitrary advantages of countries where currencies depreciate significantly more than competitive factors would dictate.[7]

The exchange adjustments envisioned here would restore true comparative advantage in the factors of production in a free trade regime. This correction would allow countries with appreciating or declining currencies to maintain their respective domestic policies. Moveover, it would discourage the development of an unbalanced trade position that forces countries to seek protectionist quotas or marketing agreements. No country would have to pay for another's excesses, and the use of tariff adjustment rather than quotas lets the market mechanism determine trade flows without skewing market shares.

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[7]This does not argue against better central bank coordination in the currency markets to stem speculative or other disorderly market conditions. However, such action cannot change the direction of basic economic forces on exchange rates and cannot be used to actually set a particular rate.

A 30 percent currency misalignment, combined with a persistent current account deficit,[8] as in the present situation favoring the yen, would give the United States the option to add that amount, or perhaps 80 percent of it, to its basic tariff rates on Japanese imports. When the yen-dollar relationship started to correct (or if the trade and current accounts moved back into line first), the tariff would be reduced to its original level. Changes in calculating the tariff charge could be made on a yearly basis.[9] Thus, the traded goods sector would not have to contend with daily changes.

Included with my testimony is an annex which outlines the criteria to be considered in any application of this proposal. This annex can be a starting point for consideration of this approach.

Floating exchange rates were supposed to achieve an equilibrium in the current account by adjusting for variations in inflation rates between countries. When exchange rates do not adjust for these differences, then our proposal would make the adjustment by affecting the trade account and ultimately the current account. And the revenues collected therefrom could be used to finance such programs as the Export-Import Bank.

Thus, no undue trade advantage would be given to countries with internal policies that cause currency fluctuation. True comparative advantage in the factors of

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[8]When we have a current account deficit and a large trade surplus, maximum leeway should be used in assessing whether or not to use exchange-adjusted tariffs. Also, the current account must be precisely defined so that reinvested earnings and NATO expenditures do not skew our commercial balances.

[9]The Committee may want to ask the International Trade Commission to study this proposal and report its independent findings. IEPA staff resources do not allow for the development of alternative econometric models or formulas to quantitatively illustrate all of the details involved.

production could be followed with trade competition based on real economic differences.

Some have argued that capital flows must also be adjusted by the use of controls.[10] However, for those who maintain that these flows must be regulated, we should be careful not to institutionalize capital controls by the depreciating currency country. To do so does not offer a market response and is akin to quotas in that the economic rent of the controls is reserved for the government or businesses of the country already receiving the trade benefits of depreciation. The effect is like the auto quotas which enriched Japanese car companies more than American ones. Instead, if adjustment of financial flows is felt to be warranted, then it should be through rate equalization charges levied by the appreciating currency country on the lender (i.e., the foreign supplier of funds) and not on the borrower (a U.S. citizen). The market system on allocation and pricing of funds would operate and the initial cost of funds to the borrower would be at his country market rates. The actual adjustment might be set at the difference between real interest rates in the foreign market, with perhaps an added historical markup such as 2 percent for the United States, and nominal rates in the U.S. In this way the flow of funds would be guided by the real economic return to be gained by investing in the United States rather than by very high nominal rates in the United States.

B. The United States should make use of Article XII of GATT on restrictions to safeguard the balance of payments. Under this article, the United States would be allowed to restrict the "quantity or value of merchandise permitted to be imported."

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[10] See: C. Fred Bergsten in Current Exchange Rate Relationship of the U.S. Dollar and the Japanese Yen, Subcommittee on Trade, House Ways & Means Committee, November 1982, p. 28.

Where serious balance of payments difficulties arise, we should not be afraid to use internationally recognized corrective devices. Any necessary special measures should be temporary and not cemented in legislation. They should never be used to protect inefficient industries over a long term. The consultations required by Article XII could help us to bargain realistically with other countries, impress upon them the seriousness of our problems, and demonstrate our resolve to act with or without their help. In the past, Article XII has been used by several countries, including some in the reserve currency category. Britain, where the pound was considered a major reserve currency up to the 1970s, used Article XII on more than one occasion. France and Japan have also invoked its provisions.

In restricting merchandise imports (in value terms), we should apply a tariff rate quota across the board. The funds obtained from this measure (or from A above) could be used to promote exports or meet foreign subsidies, especially where misalignment of currencies creates an overvalued dollar.

In joint consultations under GATT, we should explore the use of Article XII on a bilateral basis.[11] The changed circumstances in the world since GATT was written should be reflected. To reflect changing times, even our Constitution, a most sacred document, has been amended in response to crises.

Some of our suggestions may seem unorthodox but they highlight my view that we cannot wait for reductions in our domestic budget deficit -- as important as that is -- to solve our problem. And hopes that the dollar will be allowed to depreciate enough to overcome a large portion of our trade deficit may be ill placed. Any help from such a depreciation will probably be too little and too late for major sectors of the American economy.

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[11] Unfortunately, Article XII only allows action across the board so its use would apply to countries where we do not have serious problems.

ANNEX

Definitions and Possible Criteria
For the Use of Exchange-Adjusted Tariffs

I. Definition

A. The current account must be defined as those current U.S. transactions on trade in goods and services EXCLUDING:

1. Reinvested earnings--these are not inflows but are added to the government's current account figures and subtracted from the capital account. The overall effect is a zero-zero balance but the present effect on the current account is a fictitious positive inflow.

2. Net direct defense expenditures--these are a separate line item in the present current account. However, our NATO expenditures are so large in Germany, for instance, $3.7 billion in 1983, that this issue should be considered separately.

3. The trade effect of the special U.S.-Canadian auto agreement should be eliminated. As a separate agreement ratified by the Congress, its possible inclusion should only be by amendment to that agreement.

B. Misalignment of currencies shall be determined by using the real effective exchange rates--the index of the effective exchange rate adjusted for inflation differentials, measured by wholesale prices of nonfood manufactures. The effective exchange rate is the measure of a currency's trade-weighted average appreciation or depreciation vis-a-vis the currencies of 15 other major countries. An index would be used based upon March 1973 = 100. This is the same index used up to the summer of 1983 by Morgan Guaranty Trust Company in World Financial Markets.

C. The percentage of misalignment would be the full index point differential between the U.S. and the target country. To account for any possible errors, a 5 point leeway could be subtracted from this difference.

ANNEX (continued)

II. Criteria

A. The following steps in order of listing would determine exchange-adjusted tariffs and their use. Such use would be on a country basis.

1. There must be a persistent current account deficit with the target country. "Persistent" would be classified as occurring over four consecutive quarters during one calendar year.

2. The current account deficit with the target country represents 20 percent of the U.S. total current account deficit for the year.

3. The percent of misalignment of both currencies would be determined.

4. When both 1 and then 2 are met, then 3 would be applied as an added tariff for a one-year period. Except that as a failsafe if:

a. The U.S. subsequently experiences a current account surplus with the target country for one of the first two quarters after imposition of the extra tariff, AND

b. The average exchange rate relationship re-adjusts to within 5 percent of parity, THEN

c. The tariff would be dropped after the two quarters.

5. At the end of the year, a review would take place, starting with step II.A.1, then 2, and, if necessary, then 3 and 4.

TABLE I

U.S. NONMILITARY MERCHANDISE TRADE BY AREA, 1965-1985 (Balance of Payments Basis)

YEAR	TOTAL			CANADA			W. EUROPE			LATIN AMERICA			JAPAN			OTHER		
	EXP.	IMP.	BAL.	EXP.	IMP.	BAL.	EXP.	IMP.	BAL.	EXP.	IMP.	BAL.	EXP.	IMP.	BAL.	EXP.	IMP.	BAL.
1965	26.5	21.5	5.0	5.7	4.8	0.9	8.9	6.2	2.7	4.2	4.4	-0.2	2.1	2.4	-0.3	5.6	3.7	-1.9
1966	29.3	25.5	3.8	6.7	6.0	0.7	9.6	7.7	1.9	4.7	4.7	0.0	2.3	3.0	-0.7	6.0	4.1	1.9
1967	30.7	26.9	3.8	7.3	6.9	0.4	9.7	8.1	1.6	4.7	4.7	0.0	2.7	3.0	-0.3	6.3	4.2	2.1
1968	33.6	33.0	0.6	8.2	8.6	-0.4	10.5	10.2	0.3	5.3	5.1	0.2	3.0	4.1	-1.1	6.6	5.0	1.6
1969	36.4	35.8	0.6	9.1	9.9	-0.8	11.6	10.2	1.4	5.5	5.2	0.3	3.5	4.9	-1.4	6.7	5.6	1.1
1970	42.5	40.0	2.5	9.5	10.7	-1.2	14.2	11.3	2.9	6.5	5.9	0.6	4.7	5.9	-1.2	7.6	6.2	1.4
1971	43.3	45.6	-2.3	10.9	12.2	-1.3	13.6	12.8	0.8	6.5	6.1	0.4	4.1	7.3	-3.2	8.2	7.2	1.0
1972	49.4	55.8	-6.4	13.1	14.5	-1.4	15.0	15.7	-0.7	7.2	7.1	0.1	5.0	9.1	-4.1	9.1	9.4	-0.3
1973	71.4	70.5	0.9	16.7	17.7	-1.0	21.2	19.8	1.4	10.0	9.6	0.4	8.4	9.7	-1.3	15.1	13.7	1.4
1974	98.3	103.8	-5.5	21.8	22.6	-0.8	28.2	24.3	3.9	25.8	18.7	-2.9	10.7	12.4	-1.7	21.8	25.8	-4.0
1975	107.1	98.2	8.9	23.5	21.9	1.6	29.9	20.8	9.1	17.1	16.2	0.9	9.6	11.3	-1.7	27.0	28.0	-1.0
1976	114.7	124.2	-9.5	26.3	26.7	-0.4	31.9	23.0	8.9	16.9	17.2	-0.3	10.2	15.5	-5.3	29.4	41.8	-12.4
1977	120.8	151.9	-31.1	28.5	29.9	-1.4	34.1	28.2	5.9	17.9	21.2	-3.3	10.6	18.6	-8.0	29.7	54.0	-24.3
1978	142.1	176.0	-33.9	31.2	33.8	-2.6	39.5	36.6	2.9	22.0	23.0	-1.0	13.0	24.5	-11.5	36.4	58.1	-21.7
1979	184.5	212.0	-27.5	38.7	39.2	-0.5	54.2	41.8	12.4	28.6	30.5	-1.9	17.6	26.3	-8.7	45.4	74.2	-28.8
1980	224.2	249.8	-25.6	41.6	42.9	-1.3	67.6	47.3	20.3	38.8	37.5	1.3	20.8	31.2	-10.4	55.4	90.9	-35.5
1981	237.0	265.1	-28.1	46.0	48.3	-2.3	65.1	52.9	12.2	42.8	39.1	3.7	21.8	37.6	-15.8	61.3	87.2	-25.9
1982	211.2	247.6	-36.4	39.3	48.5	-9.2	59.7	52.9	6.8	33.2	38.6	-5.4	20.7	37.7	-17.0	58.3	69.9	-11.6
1983	200.3	261.3	-61.0	43.8	54.4	-10.6	54.9	53.9	1.0	25.6	41.9	-16.3	21.7	41.3	-19.6	54.3	69.8	-15.5
1984	220.3	328.6	-108.3	53.1	69.5	-16.4	57.1	71.0	-13.9	29.8	48.0	-18.2	23.3	57.3	-34.0	56.7	82.6	-25.9
1985	214.0	338.3	-124.3			-17.1			-21.2			-15.6			-43.4			-27.0

Source: SURVEY OF CURRENT BUSINESS, U. S. Department of Commerce, various issues.

TABLE II (a)
U. S. TRADE BY MAJOR CATEGORY

(millions of $)

	FOOD & LIVE ANIMALS			BEVERAGES & TOBACCO		
	EX.	IM.	BAL.	EX.	IM.	BAL.
1957	2,388	3,052	- 664	442	313	129
1958	2,240	3,208	- 968	448	343	105
1959	2,405	3,173	- 768	447	407	40
1960	2,662	2,996	- 334	483	396	87
1961	2,916	3,018	- 102	506	437	69
1962	3,179	3,243	- 64	498	431	67
1963	3,565	3,401	164	531	462	69
1964	4,076	3,487	589	554	535	19
1965	4,003	3,460	543	517	553	- 36
1966	4,562	3,948	614	624	642	- 18
1967	4,061	4,003	58	649	698	- 49
1968	3,890	4,577	- 687	702	786	- 84
1969	3,733	4,531	- 798	714	778	- 64
1970	4,356	5,375	-1,019	702	855	- 153
1971	4,367	5,529	-1,162	709	876	- 167
1972	5,661	6,370	- 709	908	1,009	- 101
1973	11,930	8,015	3,915	1,008	1,221	- 213
1974	13,986	9,386	4,600	1,247	1,322	- 75
1975	15,484	8,503	6,981	1,308	1,420	- 112
1976	15,710	10,267	5,443	1,524	1,624	- 100
1977	14,116	12,558	1,558	1,847	1,669	178
1978	18,311	13,522	4,789	2,293	2,221	72
1979	22,245	15,170	7,075	2,337	2,565	- 228
1980	27,744	15,763	11,981	2,663	2,771	- 108
1981	30,291	15,238	15,053	2,915	3,138	- 223
1982	23,950	14,453	9,497	3,026	3,364	- 338
1983	24,166	15,412	8,754	2,813	3,408	- 595
1984	24,463	17,973	6,490	2,849	3,653	- 804
1985	19,267	18,650	6.7	2,958	3,727	- 769

Source: Oversees Business Reports and Survey of Current Business, U. S. Dept. of Commerce, various issues.

TABLE II (b)
U. S. TRADE BY MAJOR CATEGORY
(millions of $)

	ANIMAL & VEGETABLE OIL & FATS			CHEMICALS		
	EX.	IM.	BAL.	EX.	IM.	BAL.
1957	335	102	233	1,376	668	808
1958	272	98	174	1,425	789	636
1959	320	104	216	1,558	868	690
1960	307	95	212	1,805	821	984
1961	289	93	196	1,816	738	1,078
1962	314	98	215	1,883	772	1,111
1963	320	105	215	1,994	715	1,279
1964	414	119	295	2,364	702	1,662
1965	472	116	356	2,402	769	1,633
1966	357	146	211	2,675	955	1,720
1967	338	122	216	2,802	958	1,844
1968	274	158	116	3,287	1,129	2,158
1969	308	137	171	3,383	1,228	2,155
1970	493	160	363	3,826	1,450	2,376
1971	615	172	443	3,836	1,612	2,224
1972	508	180	328	4,133	2,015	2,118
1973	684	259	425	5,749	2,463	3,286
1974	1,423	544	879	8,819	4,018	4,801
1975	94[illegible]	554	390	8,691	3,696	4,995
1976	978	464	514	9,959	4,772	5,187
1977	1,309	531	778	10,812	4,970	5,842
1978	1,521	511	1,010	12,623	6,430	6,193
1979	1,845	740	1,105	17,306	7,479	9,827
1980	1,946	533	1,413	20,740	8,583	12,157
1981	1,750	480	1,270	21,187	9,446	11,741
1982	1,541	406	1,135	19,891	9,494	10,397
1983	1,459	495	964	19,751	10,779	8,972
1984	1,922	696	1,226	22,336	13,697	8,639
1985	1,434	675	759	21,761	14,532	7,229

Source: Overseas Business Reports and Survey of Current Business, U. S. Dept. of Commerce, various issues.

TABLE II (c)
U. S. TRADE BY MAJOR CATEGORY
(millions of $)

	CRUDE MATERIALS (INEDIBLE) OTHER THAN FUELS			MINERAL FUELS AND RELATED MATERIALS		
	EX.	IM.	BAL.	EX.	IM.	BAL.
1957	2,533	2,766	- 233	1,814	1,556	258
1958	1,708	2,331	- 623	1,071	1,631	- 560
1959	1,823	2,907	- 1,084	853	1,568	- 715
1960	2,777	2,711	66	814	1,574	- 760
1961	2,765	2,485	280	763	1,725	- 962
1962	2,211	2,668	- 457	799	1,874	- 1,075
1963	2,476	2,673	- 197	945	1,914	- 969
1964	2,978	2,880	98	953	2,030	- 1,077
1965	2,856	3,103	- 247	947	2,221	- 1,274
1966	3,071	3,310	- 239	976	2,262	- 1,286
1967	3,284	2,997	287	1,104	2,248	- 1,144
1968	3,541	3,346	195	1,050	2,527	- 1,477
1969	3,569	3,460	109	1,130	2,794	- 1,664
1970	4,605	3,307	1,298	1,595	3,075	- 1,480
1971	4,329	3,382	947	1,497	3,715	- 2,218
1972	5,030	3,860	1,170	1,552	4,799	- 3,247
1973	8,380	5,014	3,366	1,671	8,173	- 6,502
1974	10,934	6,066	4,868	3,444	25,454	-22,010
1975	9,784	5,566	4,218	4,470	26,476	-22,006
1976	10,891	7,014	3,877	4,226	33,996	-29,770
1977	13,086	8,464	4,622	4,184	47,153	-42,969
1978	15,555	9,294	6,261	3,881	44,763	-40,882
1979	20,755	10,653	10,102	5,616	63,076	-57,460
1980	23,791	10,496	13,295	7,982	82,924	-74,942
1981	20,992	11,193	9,799	10,279	81,417	-71,138
1982	19,248	8,589	10,659	12,729	65,409	-52,680
1983	18,596	9,590	9,006	9,500	57,952	-48,352
1984	20,249	11,082	9,167	9,310	60,980	-51,670
1985	16,939	10,392	6,547	9,971	53,917	-43,946

Source: Oversees Business Reports and Survey of Current Business, U. S. Dept. of Commerce, various issues.

TABLE II (d)
U. S. TRADE BY MAJOR CATEGORY

(millions of $)

	MACHINERY			TRANSPORT EQUIPMENT		
	EX.	IM.	BAL.	EX.	IM.	BAL.
1957	4,215	431	3,784	2,654	431	2,223
1958	3,894	483	3,411	2,496	670	1,826
1959	3,883	676	3,207	2,193	957	1,236
1960	4,308	724	3,584	2,704	742	1,962
1961	4,761	789	3,972	2,569	575	1,994
1962	5,217	954	4,263	2,840	720	2,120
1963	5,483	1,054	4,429	2,785	764	2,021
1964	6,525	1,314	5,211	2,844	902	1,942
1965	6,934	1,800	5,134	3,214	1,148	2,066
1966	7,678	2,688	4,990	3,478	2,135	1,343
1967	8,280	3,099	5,181	4,294	2,695	1,599
1968	8,844	3,772	5,072	5,603	4,215	1,388
1969	10,137	4,571	5,566	6,266	5,192	1,074
1970	11,685	5,375	6,310	6,197	5,798	399
1971	11,839	6,059	5,780	7,621	7,814	- 193
1972	13,566	7,916	5,650	7,951	9,504	- 1,553
1973	17,588	10,750	7,438	10,281	10,926	- 645
1974	24,318	11,811	12,507	13,871	12,251	1,620
1975	29,215	11,970	17,245	16,452	11,487	4,965
1976	32,113	15,446	16,667	17,388	14,378	3,010
1977	32,630	18,836	13,794	17,619	17,571	48
1978	38,105	24,752	13,353	21,163	22,838	- 1,675
1979	45,914	28,530	17,384	24,577	25,148	- 571
1980	57,263	32,286	24,977	27,366	28,260	- 894
1981	62,946	38,212	24,734	32,791	31,415	1,376
1982	59,324	39,457	19,867	27,824	33,863	- 6,039
1983	54,309	46,975	7,334	28,269	39,156	- 10,887
1984	60,318	68,345	- 8,027	29,655	50,802	- 21,147
1985	59,490	75,297	-15,807	34,792	61,964	- 27,172

Source: Overseas Business Reports and Survey of Current Business, U. S. Dept. of Commerce, various issues.

TABLE II (e)
U. S. TRADE BY MAJOR CATEGORY

(millions of $)

	MANUFACTURED GOODS			OTHER TRANSACTIONS		
	EX.	IM.	BAL.	EX.	IM.	BAL.
1957	4,349	3,542	807	475	362	113
1958	3,731	3,342	389	466	325	141
1959	3,537	4,589	- 1,052	431	380	51
1960	4,076	4,559	- 483	450	401	49
1961	3,891	4,421	- 530	476	435	41
1962	3,972	5,180	- 1,208	518	440	78
1963	4,349	5,532	- 1,183	615	517	98
1964	4,795	6,188	- 1,393	794	591	203
1965	4,890	7,528	- 2,638	954	730	224
1966	5,388	8,668	- 3,280	1,187	866	321
1967	5,468	9,004	- 3,536	959	1,065	- 96
1968	6,084	11,208	- 5,424	924	1,028	- 104
1969	7,000	12,020	- 5,020	1,224	1,332	- 108
1970	7,636	13,285	- 5,649	1,496	1,274	222
1971	7,147	14,929	- 7,782	1,531	1,476	55
1972	8,094	18,332	-10,238	1,560	1,598	- 38
1973	11,113	21,461	-10,348	1,842	1,794	48
1974	16,515	27,145	-10,630	2,587	2,256	331
1975	16,592	23,927	- 7,335	3,162	2,518	644
1976	17,781	30,180	-12,399	2,749	2,538	211
1977	19,091	35,176	-16,085	4,314	3,358	956
1978	22,644	46,296	-23,652	5,030	4,018	1,012
1979	28,879	51,070	-22,191	9,103	4,905	4,198
1980	38,602	55,901	-17,299	8,496	7,183	1,313
1981	37,379	63,471	-26,092	8,389	7,296	1,093

	MANUFACTURED GOODS & OTHER TRANSACTIONS		
	EXP.	IMP.	BAL.
1982	39,543	68,917	-29,374
1983	37,106	74,281	-37,175
1984	40,932	98,588	-57,656
1985	40,300	106,121	-65,821

Source: Overseas Business Reports and Survey of Current Business, U. S. Dept. of Commerce, various issues.

TABLE III

U.S. TRADE BALANCE, OFFICIAL CURRENT ACCOUNT AND CURRENT ACCOUNT ON ACTUAL TRANSACTIONS[1]

OVERALL, 1960-1970

	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970
U.S. Overall Trade Balance	4,892	5,571	4,521	5,224	6,801	4,951	3,817	3,800	635	607	2,603
Official Current Account	1,732	3,005	2,404	3,143	5,718	4,251	1,582	1,215	-1,374	-2,017	- 356
Overstatement[2] of Net Reinvested Earnings	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Current Account on Actual Transactions	1,732	3,005	2,404	3,143	5,718	4,251	1,582	1,215	-1,374	-2,017	- 356

OVERALL, 1971-1985

	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983
U.S. Overall Trade Balance	-2,260	-6,416	+911	-5,505	+8,903	-9,483	-31,091	-33,947	-27,536	-25,480	-27,978	-36,444	-62,012
Official Current Account	-1,433	-5,795	+7,140	+1,962	+18,116	+4,207	-14,511	-15,427	- 991	+ 1,873	+ 6,339	- 8,051	-40,790
Overstatement[2] of Net Reinvested Earnings	(+2,635)	(+3,963)	(+7,248)	(+6,712)	(+6,859)	(+6,037)	(+4,810)	(+ 8,760)	(+15,010)	(+10,850)	(+ 8,879)	(+6,706)	(+9,603)
Current Account on Actual Transactions	-4,068	-9,758	- 108	-4,750	+11,257	-1,830	-19,321	-24,187	-16,001	- 8,977	- 2,540	-14,757	-50,393

	1984	1985
U. S. Overall Trade Balance	-114, 107	-124,289
Official Current Account	-107,358	-117,664
Overstatement[2] of Net Reinvested Earnings	(+10,358)	11,000 (est.)
Current Account on Actual Transactions	-118,323	-128,664 (est.)

(footnotes attached)

TABLE III

Footnotes:

1/ Current Account on Actual Transactions represents the balance of actual imports and exports of goods and services. It is the current expenditure of dollars on all imports minus the earning of foreign exchange from all exports and includes the balance on goods and services and unilateral transfers but excludes accounting gimmicks as outlined in footnote 2.

2/ Reinvested earnings of American companies abroad are included in the government current account figures as if they were an inflow of funds, thus inflating our exports of goods and services. These monies are not an actual inflow of funds, of course, since they are earned abroad, taxed abroad and used abroad. In the U.S. Official Capital Account the exact same "inflow" is subtracted as an outflow so the total effect on our complete payments accounts is zero. The reverse of the above is true for reinvested earnings of foreign companies here in the United States. The figure on this line represents the difference between the fictitious export and import of these funds. A (+) represents the net amount that must be subtracted from the official current account; a (-) represents the amount that must be added.

NA - Not applicable. In earlier years, reinvested earnings were never included in the current account. The change to include them on the plus side of the current account and below the line on the negative side of the capital account occurred in 1977. U.S. accounts since then have been restated back to 1971 and have overstated the actual balance in foreign exchange terms.

SOURCE: Survey of Current Business, U.S. Department of Commerce, various issues.

TABLE IV (a)

U.S. TRADE AND CURRENT ACCOUNT[1] BALANCES WITH SELECTED COUNTRIES
(millions of $)

Year	CANADA		UNITED KINGDOM	
	Trade	Current	Trade	Current
1960	861	1,054	466	141
1961	625	965	294	85
1962	393	685	147	-74
1963	388	596	173	-31
1964	593	1,177	468	360
1965	642	1,401	216	92
1966	801	1,753	-24	-171
1967	448	1,053	162	166
1968	-442	373	-86	-248
1969	-812	44	-42	-758
1970	-1,645	-580	329	-484
1971	-1,760	-453	-73	-779
1972	-1,972	-426	-214	-975
1973	-984	676	232	-507
1974	-550	1,541	583	-240
1975	1,827	6,673	1,144	258
1976	-139	5,814	941	- 1
1977	-1,112	4,938	900	754
1978	-2,323	4,704	802	893
1979	- 330	8,720	2,677	6,316
1980	-1,277	7,315	2,970	5,602
1981	-2,242	7,174	-263	3,859
1982	-9,323	98	-2,352	-925
1983	-11,521	-19	-1,846	-1,462
1984	-16,381	-5,309	-2,154	-3,629
1985	-17,127	-8,006	-3,304	-3,441

[1] This includes reinvested earnings which are not really inflows.

Source: Survey of Current Business, various issues.

TABLE IV (b)

U.S. TRADE AND CURRENT ACCOUNT[1] BALANCES WITH SELECTED COUNTRIES
(millions of $)

	GERMANY		FRANCE		MEXICO	
	Trade	Current	Trade	Current	Trade	Current
1968	-1,085	-1,679	233	229	468	390
1969	- 622	-1,299	386	303	422	391
1970	- 506	-1,270	596	439	483	407
1971	1,121	-1,897	316	206	357	186
1972	-1,546	-3,101	251	103	353	32
1973	-1,841	-3,860	581	333	655	338
1974	-1,615	-3,301	670	522	1,469	1,335
1975	- 306	-1,684	962	1,164	2,107	2,459
1976	- 177	- 620	1,031	1,098	1,412	1,223
1977	-1,399	-2,576	490	674	140	- 52
1978	-2,766	-3,918	190	684	595	644
1979	-2,259	-4,236	850	1,110	1,130	1,785
1980	- 243	-3,167	2,277	2,721	2,647	4,790
1981	- 887	-4,192	1,592	1,145	4,440	8,807
1982	-2,689	-5,866	1,661	1,827	-3,820	-1,956
1983	-3,959	-9,600	- 3	+103	-7,690	-6,606
1984	-8,110	-15,852	-1,923	-2,139	-6,001	-3,872
1985	-10,530		-2,774		-5,789	

[1] This includes reinvested earnings which are not really inflows.

Source: Survey of Current Business, various issues.

TABLE V

U.S. TRADE AND OFFICIAL CURRENT ACCOUNT BALANCES WITH JAPAN, 1960-1984

(in millions of $)

Year	U.S. Trade Balance with Japan	Current[1] Account with Japan
1960	225	-108
1961	710	454
1962	180	- 52
1963	320	105
1964	200	86
1965	-388	-505
1966	-634	-915
1967	-345	-587
1968	-1,120	-1,384
1969	-1,416	-1,777
1970	-1,244	-1,541
1971	-3,225	-3,475
1972	-4,113	-4,821
1973	-1,309	-1,463
1974	-1,690	- 944
1975	-1,690	-1,220
1976	-5,335	-5,405
1977	-7,999	-8,126
1978	-11,581	-11,791
1979	-8,632	-8,746
1980	-10,411	-8,917
1981	-15,882	-13,923
1982	-16,991	-15,478
1983	-19,630	-18,401
1984	-34,023	-34,764
1985	-43,390	-44,000 (est.)

[1] This includes reinvested earnings which are not really inflows.

Source: Survey of Current Business, various issues.

TABLE VI

SIC Code	Industry	Increase in U.S. Imports between 1980 and 1984 (Percent)	Employment Loss January 1980 to April 1985 (Thousands)
331	Blast furnaces and basic steel prod.	48.1	-245.0
353	Construction and related machinery	91.2	-144.4
332	Iron and steel foundries	75.8	-82.9
344	Fabricated structural and metal prod.	10.7	-77.8
352	Farm and garden machinery	6.6	-71.3
354	Metalworking machinery	29.8	-63.8
356	General industrial machinery	79.1	-56.5
362	Electrical industrial apparatus	85.2	-52.3
282	Plastics materials and synthetics	259.0	-42.2
314	Footwear, except rubber	207.8	-41.4
221	Weaving mills, cotton	98.8	-40.8
355	Special industry machinery	39.7	-39.6
363	Household appliances	225.4	-33.7
351	Engines and turbines	38.1	-31.7
228	Yarn and thread mills	236.3	-31.2
225	Knitting mills	91.2	-30.0
301	Tires and inner tubes	58.3	-29.4
365	Radio and TV receiving equipment	227.9	-29.3
222	Weaving mills, synthetics	179.8	-28.8
346	Metal forgings and stampings	20.9	-26.9
341	Metal cans and shipping containers	177.7	-23.7
281	Industrial inorganic chemicals	141.0	-19.9
229	Miscellaneous textile goods	24.3	-16.6
399	Miscellaneous manufactures	154.7	-14.9
325	Structural clay products	41.9	-12.1
361	Electrical distributing equipment	98.5	-12.0
287	Agricultural chemicals	51.7	-11.6
372	Aircraft and parts	38.3	-10.0
386	Photographic equipment and supplies	72.7	-9.9
324	Cement, hydraulic	49.5	-7.8
286	Industrial organic chemicals	78.0	-6.4
316	Luggage	128.4	-5.2

TABLE VII

IMPACT OF ELECTORAL VOTE OF
SIX "RUST BELT" STATES, 1948-1984

STATES	1948 (303-189-39)	1952-56	1960 (303-219-15)	1964	1968 (301-191-46)	1972	1976 (297-240)	1980-84
Illinois (24)	D	R	D	D	R	R	R	R
Indiana (12)	R	R	R	D	R	R	R	R
Michigan (20)	R	R	D	D	D	R	R	R
Ohio (23)	D	R	R	D	R	R	D	R
Pennsylvania (25)	R	R	D	D	D	R	D	R
Wisconsin (11)	D	R	R	D	R	R	D	R

The six states together have 115 electoral votes or 23.3 percent of the total. While no absolutes can be drawn from the above chart, one definite pattern does emerge. That is, when the Democrat candidate has carried three or more -- 1948, 1960, 1964, 1976 -- he won the election, and conversely when he carried less than three -- most notably in 1968 -- the Republican won. With the exception of the 1964 Johnson landslide, the three other Democrat victories were all won by narrow popular votes and relatively narrow electoral vote margins where the votes in three of these states were crucial to victory. For example:

---In 1948, had Truman not carried Pennsylvania and Illinois, no candidate would have received a majority, and the election would have been decided in the House of Representatives

---In 1960, had Kennedy not carried Pennsylvania and Illinois, Nixon would have been elected. Or, if he had lost either state and Michigan, the election would have been reversed or thrown into the House depending on the behavior of the 15 electors who voted for Harry Byrd, Sr.

---In 1976, had Ford carried any two of the three states carried by Carter, he would have been elected.

In short, while it cannot be concluded above that the Democrat will always win when he carries three or more of the "rust belt" states, the voting patterns of the past 40 years indicates strongly that he will not win should he fail to do so.

ILGWU

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Ways and Means
Subcommittee on Trade
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SOL C. CHAIKIN
PRESIDENT
JAY MAZUR
GENERAL SECRETARY-TREASURER
WILBUR DANIELS
IRWIN SOLTNICK
EXECUTIVE VICE PRESIDENTS
GENERAL EXECUTIVE BOARD
RONALD ALMAN
NICHOLAS S. BONANNO
SAMUEL BYER
CLIFFORD DEPIN
EVELYN DUBROW
SAM FINE
JOSEPH FISHER
SALVATORE GIARDINA
SOL GOLDBERG
SOL HOFFMAN
MATTIE JACKSON
LILLIAN KOLWYCK
LOU MONTENEGRO
PETER NADASH
EDGAR ROMNEY
EDWARD SCHNEIDER
ANTHONY SCUTO
CORNELIUS WALL

30 January 1986

The Honorable Dan Rostenkowski
2111 Rayburn HOB
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of the International Ladies Garment Workers' Union, I am writing to urge your opposition to proposals giving the Administration authority to further reduce duties during a new round of multilateral trade negotiations.

In its deliberations on this question, the Ways and Means Committee should be aware of the havoc that imported apparel, clothing, and textiles have wreaked on these great American industries. Since 1980, imports of these items have doubled, to a point where they now account for more than half the garments and textiles in the United States.

These related industries once employed 2.5 million workers throughout the nation--now they employ less than 1.7 million. The workers in these industries, often hampered by insufficient education and job skills, have few other job opportunities. Thousands of small entrepreneurs see their capital impaired daily.

With an average increase in garment and textile imports of 19% a year over the last five years, it is evident that present duties on imports do not constitute a significant barrier in keeping foreign-made products out of our markets. Further duty cuts are obviously not necessary to make our markets attractive to imports, nor should we be opening our economy any further than it is now to imports.

I hope that the Ways and Means Committee will decide not to authorize any further cuts in duties.

Sincerely,

Sol C. Chaikin
President

SCC:ss

International Leather Goods Plastics and Novelty Workers' Union

Affiliated with American Federation of Labor and Congress of Industrial Organizations
General Office: 265 West 14th Street, New York, N. Y. 10011
Telephone: ORegon 5-9240
General President:

March 25, 1986

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APR - 1986
Ways and Means
Subcommittee on Trade

Honorable Dan Rostenkowski
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Rostenkowski:

The International Leather Goods, Plastics, and Novelty Workers' Union, AFL-CIO, has about 12,000 members in the New York-New Jersey Metropolitan area engaged in the production of luggage, handbags, and personal leather goods, as well as several thousand more in these industries located in Florida, Tennessee, Chicago, Alabama, Georgia, Minnesota, and Puerto Rico.

Our members have lost hundreds of jobs over the past few years because of imports. These are not high paying jobs held by people that are easily re-employed. Our members are minorities, women and immigrants and where they live and with their skills they do not have many job opportunities. We are working to preserve the jobs of our members, but our task is next to impossible when cheap foreign imports are flooding our markets and wiping out the jobs of our workers.

We hope you will oppose any legislation which will give imports an even wider access to our markets than they already have. And in particular, we hope you will strongly oppose granting the President tariff cutting authority in a new trade round.

Currently, tariffs on leather products are the only insulation we have against imports. To reduce these tariffs at a time when imports in the leather products sector are already so high (85 percent for handbags, 56 percent for luggage and 35 percent for personal leather goods) would be an invitation to more imports. Our members cannot believe that Congress would even consider cutting tariffs, thus encouraging more imports, when the 1985 trade deficit was at almost $150 billion. We hope you will oppose giving this discretionary authority to the President.

Sincerely,

Domenic DiPaola

Domenic DiPaola
General President

INTERNATIONAL —— WASHINGTON OFFICE ——
LONGSHOREMEN'S & WAREHOUSEMEN'S UNION

1133 - 15TH STREET N.W. WASHINGTON, D.C. 20005 · (202) 463-6265

JAMES R. HERMAN, President
RUDY RUBIO, Vice President
CURTIS McCLAIN, Secretary-Treasurer

April 11, 1986

Honorable Sam Gibbons
Chairman, House Ways and Means
Subcommittee on Trade
1136 Longworth Office Building
Washington, DC 20515

Dear Mr. Chairman,

I am writing to express the ILWU's views on a particular aspect of trade legislation now under consideration by your subcommittee. Our comments, which we request be made a part of your hearing record, will be confined to H.R. 4412, the Fair Trade and Economic Justice Act of 1986.

The recent introduction of this bill by Rep. Don Pease and other House members is an extremely significant development in the Congressional debate over the U.S. trade deficit. H.R. 4412 places a needed emphasis on the relationship between the extensive violation of basic labor rights abroad and the recent flood of imports that has victimized millions of U.S. workers.

Trade policy has been viewed for too long by too many as merely a contest between the philosophies of "free trade" and "protectionism." More attention has been paid to the fact of cheap imports than to their true causes. There is a misconception that the United States' comparative openness to imports is itself the reason for their steady increase. But the absence of barriers alone can hardly explain why these imports have so steadily displaced American products in the market place. The ultimate reason is that they cost significantly less to produce -- and in a number of countries in the Third World this is the direct result of inexcusably bad working conditions and the supression of workers' efforts to organize.

H.R. 4412 strikes at the heart of this unfair competitive advantage by imposing restrictions on imports from countries where the basic labor rights defined in the 1974 Trade Act are violated. Specifically, these rights are the freedom of association; the right to organize and bargain collectively; prohibition of forced labor; a minimum working age; and acceptable standards of work hours, wages, and occupational safety. The bill would define violations of these rights as unfair trade practices; make them actionable under Section 301 of the 1974 Trade Act; authorize appropriate sanctions; and require the President to attempt to negotiate similar provisions in the General Agreement on Tariffs and Trade (GATT).

With your assistance, Congress has recently made adherence to these same rights a condition of eligibility for duty-free import access under the Generalized System of Preferences (GSP). Congress has also attached similar eligibility requirements to the insurance protection offered to U.S. firms by the Overseas Private Investment Corporation (OPIC). Both of these actions were important steps in the right direction. By establishing parallel conditions for the actual import of goods, however, H.R. 4412 would do far more to address the problem.

Abundant evidence has already been submitted by unions and respected human rights organizations to Congress and to the U.S. Trade Representative that massive violations of labor rights take place in Taiwan, South Korea, the Philippines, Brazil, Haiti, Chile, and other Third-World countries. Systematic repression of union organizing

efforts, extensive child labor, and brutal working conditions in these countries have been documented at length. Average wage rates for manufacturing workers range from 10 to 15 percent of their U.S. counterparts. The differentials are even greater in agriculture: Philippine sugar cane workers, for example, are forced to compete with ILWU sugar workers in Hawaii at wages of less than $2.00 a day, even when their employers choose to honor the minimum-wage law.

Even the U.S. State Department's 1986 report on human rights, despite significant omissions and inaccuracies, has confirmed wide-ranging abuses of labor rights in countries whose imports to the United States have skyrocketed in recent years. As the ILWU and other unions have maintained, these countries clearly do not meet the eligibility criteria for GSP and OPIC; and clearly they would deserve the import sanctions H.R. 4412 would authorize.

It bears emphasis that the labor-rights violations in question are not committed merely at the whims of particular employers. In each of the countries being challenged, the government has institutionalized a well-thought-out policy of labor repression. Laws and decrees explicitly limit, and in many cases prohibit, the right to organize or strike. Laws covering minimum wage, hours of work, and occupational safety -- where they exist -- have little or no enforcement back-up and are violated on a routine basis. Government-sanctioned violence against union activists -- including murder, kidnapping, imprisonment, torture, and sexual abuse -- is commonplace. Employers in these countries, in short, are not merely misbehaving on their own volition; they are operating as they are expected to in a cultivated environment.

Some may object that the logic of this complaint would entail the impossible requirement that impoverished Third-World nations immediately provide pay and working conditions at levels equal to those in the United States in order to retain access to our market. For these critics' benefit, let the reality be acknowledged: such levels are not feasible in most of these countries at this time. Significant improvement is clearly possible, however -- particularly if the workers in these countries are allowed to organize. Four of the five requirements set out in the 1974 Trade Act and in H.R. 4412, it should be noted, deal only with rights of principle. The fifth requires only the presence of certain minimal standards and does not peg them at any absolute level. From the strategic perspective of a union, the freedom to organize is far more critical than any particular standard of environment imposed by law.

For the ILWU, the current trade imbalance only confirms what we have long known: that American workers' own well-being is inseparably bound up with the progress of our fellow-workers abroad. But self-interest is not our only motivation. Just as we reject the callous assumption by some that economic recovery in the United States will require the steady erosion of domestic labor costs to restore our "competitive edge" in the world economy, we reject the common assumption that labor rights must be trampled on as they are in many countries for the sake of "initial capital formation."

We are opposed to employers in these countries -- whether native or U.S. multi-national -- enjoying the benefit of export to the U.S. market when that benefit is to all effects and purposes withheld from their workers. We find it all the more distasteful that many of the governments which have been most guilty in this respect have also enjoyed considerable economic and military aid from the U.S. government.

For all of these reasons, we urge your Subcommittee to incorporate the labor-rights provisions of H.R. 4412 into the larger package of trade legislation you will shortly adopt, and to do all in your power to make sure that these provisions become law.

Thank you for holding these hearings and for providing us this opportunity to submit our recommendations.

Sincerely,

Mike Lewis
Washington Representative

Statement of: Trisha Katson
Legislative Director
Liberty Lobby, Inc.
300 Independence Ave., S.E.
Washington, D.C. 20003
(202) 546-5611

March 21, 1986

Before the House Ways and Means Subcommittee on Trade on the subject of comprehensive trade reform legislation

This hearing has been called to provide a general overview of trade law reform. The purpose of my testimony, which I present on behalf of our 30,000 board of policy members, is to remind the members of this subcommittee of the great economic principles espoused by our founding fathers through our Constitution that made America the most powerful nation in the world. I will leave technical analysis of the assorted trade proposals before Congress to others.

In the name of free trade--which is a myth--Congress chooses to ignore the principles of protectionism and tariffs. While the deindustrialization of America continues to the glee of those desiring and profiting from this scenario, virtually the entire political Establishment promotes free trade. Democrats, Republicans, the president, the Commerce Department, the U.S. Trade Representative. You can't become a high government official it seems if you're not a free trader.

But protectionism is a dirty word. Tariffs, the constitutional method of protecting our nation's jobs and industries, is not to be discussed as a solution to our trade ills. Establishment economists insist we must lower the value of the dollar. We must increase our exports by subsidizing them or by whatever means possible. Maybe fixed exchange rates among the nations of the world would solve our trade problems we hear. Or how about a world currency? Every solution is given by those in government except the constitutional one. This is deliberately done to protect the interests of the international bankers and financiers--those middlemen profiting from free trade while our manufacturers, farmers, workers, and small businessmen lose their livelihoods.

The Washington Post reports that members of the Ways and Means Committee attended a trade seminar last weekend sponsored by the Brookings Institution and the American Enterprise Institute. One group is regarded as left-wing, the other right-wing, but this is irrelevant: Both promote free trade and denounce protectionism. When I tried to find out what was discussed at this seminar, I was rudely told by the seminar sponsor at Brookings that it was a private meeting and none of my business. Brookings enjoys the privilege of 501(3)(c) tax status, thus U.S. taxpayers must make up for whatever taxes Brookings does not pay. It is an outrage that such groups can conduct such private meetings and refuse to make this information known to the public. The information they give to this committee will have a direct impact on the decisions the members of this committee --who are elected to represent their constituents--make on the trade issue. I'm sure many of your constituents would be quite interested in knowing what you were told at this seminar.

We must return to the American system of protective tariffs and free enterprise. Alexander Hamilton knew that tariffs were the only way to end the dependence of the colonies on Britain for manufactured goods. Without tariffs, the industries of the colonies could not have developed. George Washington supported the Tariff Act of 1789 which placed tariffs on foreign imports to encourage and protect our industries. The Tonnage Act of 1789, which taxed

foreign shipping made the birth of the American merchant marine possible. Hamilton knew that when internal competition within a nation is allowed to flourish, it prevents monopolies and reduces the price of the domestic item below what the foreign item would cost.

Congress has no interest in the U.S. economy but has an interest in promoting the global ecomony. Congress is helping the founding fathers of globalism who envision the U.S. as a state among the nations of the world. The founding fathers' of our Constitution and our nation conceived of the idea of free enterprise and competition among our own borders, but this concept--in the name of progress--has been ignored while the globalist idea of competition among the nations of the world is advanced by Congress.

The U.S. is fast becoming solely a service economy. That's free trade at work. This means we won't be manufacturing goods and will be dependent on other nations for these goods. America will be a dependent colony in the globalists' world plan. Hamilton knew that the independence and security of a nation is connected with the prosperity of its manufactured goods. If we stop manufacturing certain goods, what will prevent the price of imported goods to go up? Nothing.

Abraham Lincoln advocated tariffs as both a source of revenue and a means to protect U.S. industry. The first law passed by Congress was a tariff bill. Most of the revenues collected by the federal government for many years was through tariffs. Henry Clay of Kentucky, speaker of the House, said in 1824 that a wealthy nation protects its industry and that poverty befalls any nation that neglects its industry and leaves it exposed to foreign powers.

Our steel, shoe, textile, automobile and virtually any other industry you can name, is being destroyed. This destruction is made possible by Congress' disobedience to the Constitution and its pursuit of the un-American principle of free trade that Karl Marx loved and regarded as the key to destroying sovereign nations.

Article I, Section 8 of the Constitution gives Congress the power to regulate commerce among foreign nations. That powsr was then given by law to the president in 1934 and this authority was expanded in 1962. We now hear the proposal to give jurisdiction of trade policy to the U.S. trade representative. This would further distance away from the people a tremendous power by giving such authority to an unelected bureaucrat.

Our nation is prisoner to the economic theories of Adam Smith, who argued that free trade lowers prices, increases employment, wages, profits and domestic production. On all accounts, the opposite is true. And taken to a global level, free trade is impossible among nations which allows many of its governments to do its trading.

One well-known fallacy we hear is that imports are cheaper than American goods. That's a lie. In buying foreign imports , we are acting like a businessman paying two people to do the job one could do. First, we pay for the labor involved in producing the imports, and second, we pay through huge taxes the cost of the second payroll--welfare and government workers. These people would otherwise be working in American industry to produce the same goods we are importing. High taxes and free trade go hand in hand. The millions of unemployed workers out of work because of cheap imports have to be supported on government or welfare payrolls. We pay for imports twice.

If you are true advocates of "human rights"--that concept we hear thrown about so often--then you will support tariffs. Imported goods which are produced by slave labor, a situation where the inalienable right of individuals to contract our their own labor is denied them without just cause, ought to be taxed to protect the standard in our nation which guarantees each citizen's freedom to contract out his labor. If you do not support such a tax on imported goods produced by slave labor, you are being unfair to our nation's labor and are leaving our nation's manufacturers in an unfair competitive situation.

Integral to the promotion of the myth of free trade and its workings is the fact that we do not have either honest money or honest taxation. Article I, Section 8 of our Constitution gives Congress the power to coin money and regulate its value. That mandate is violated by the existence of the unconstitutional Federal Reserve System, a consortium of private financiers which makes money out of thin air and then charges interest on it. Our corrupt tax system makes it more profitable for American corporations to operate overseas and has weakened America's ability to maintain a strong defense by making America dependent upon a foreign merchant marine, upon foreign suppliers for raw materials needed to make weapons, and by allowing foreign manufacturers, growers and distributors to undercut American markets. Dishonest money and dishonest taxation work hand-in-hand to allow the perpetuation of so-called free trade.

If you are interested in constitutional taxation, you will favor tariffs. You will favor taxing anything that is necessary to the internal strength of our nation if it is imported. Such tariffs would encourage the domestic manufacture of these items. Imposts and duties in this area are necessary for national security reasons. To pursue the free trade path America is following will weaken our internal manufacturing capabilities and endanger our nation if foreign trading partners become hostile toward America or intimidated by other hostile foreign powers.

This year Congress will deal with trade reform by protecting certain industries in certain nations. Certain domestic industries may get temporary relief, but any attempts at true protectionism will be discouraged. This is a mistake.

The disease is international free trade. The remedy is national free trade--a return to competition and free enterprise within America.

Sources:

1) "The Inside Story" by W.A. Carto, a report published in 1962 and recently republished by Liberty Lobby.

2) "The Invisible Hand: How free trade is choking the life out of America" by Jay I. Olnek, North Stonington Press, 1984.

3) "Tariffs: The Case for Protection" by Lewis E. Lloyd, Devin-Adair Company, New York, 1955.

4) "Prosperity Restored by the State Rate Tax Plan" by E.A. Ellison, Jr., J.D. and J.W. Kurowski, Free State Constitutionists Media Publishing Co., 1985.

LGMA
Luggage and Leather Goods
Manufacturers of America, Inc.
350 Fifth Avenue
New York, New York 10118
212/695-2340

March 25, 1986

Honorable Dan Rostenkowski
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Rostenkowski:

Our industry is opposed to any legislation which would give the President the authority to cut tariffs on imports of luggage, business cases, and personal leather goods.

The 1985 trade deficit was almost $150 billion, indicating a massive imbalance in trade between the U.S. and its trading partners. To reduce tariffs even further in such a climate would only invite more imports.

Our industry has been particularly hard-hit by imports. Last year, imports of luggage had about 56 percent of our market and imports of personal leather goods had about 35 percent. Thus, it is understandable why we are opposed to any further tariff cuts on our products which would leave our domestic businesses and workers open to more damaging imports.

We hope you will oppose granting the President tariff cutting authority.

Sincerely,

Robert K. Ermatinger

Robert K. Ermatinger
Executive Vice President

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TESTIMONY OF

THE HONORABLE JOHN R. McKERNAN, JR.

MR. CHAIRMAN, I appreciate the opportunity to submit testimony on your proposed trade reforms which are now under consideration by the Subcommittee on Trade. Since I first came to Congress in 1983, trade issues have been a prime concern for me, and, as I'm sure you are aware, have long been of great importance to the people of the state of Maine. Four of Maine's leading industries -- shoes, lumber and wood products, fishing, and potatoes -- have suffered severely as a result of the great influx of imported goods to this country, and the failure of our current trade policies to deal effectively with their impact on American industries and workers. Because of the significant impact imported products have had on Maine's traditional industries, the people of Maine have a considerable interest in any federal action that would alter -- hopefully in a favorable way -- existing trade laws. I believe that many of your proposals represent positive reforms of U.S. trade policy. On behalf of the constituents whom I represent, and because of my belief in equitable trade practices, I would like to comment on your proposals, and offer some recommendations of my own.

Overall, I commend the Chairman for a trade package which addresses many of the most onerous trade issues confronting U.S. industries today. By toughening existing trade laws, streamlining the process by which U.S. industries and workers can receive relief from injury caused by foreign inports, and laying the groundwork for effective multilateral trade agreements, these trade reforms make great progress toward the development of a cohesive and comprehensive U.S. trade policy.

The measures on trade negotiating authority included in this reform package offer new hope in resolving many trade issues through multilateral negotiations, and present clear guidelines and objectives that will provide direction to U.S. trade policy. I support the objectives outlined for a new round of trade

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negotiations, including greater attention to agricultural disputes, and the issue of foreign subsidies. I believe that with clearly defined objectives, multilateral negotiations can demonstrate U.S. commitment to "fair trade" policies, resulting in more equitable trade arrangements. However, I would emphasize that these negotiations must not swap one industry's gain for another one's loss, and must be backed up with more effective and responsive domestic policies to deal with the impact of imports on American industries and workers. I believe the Chairman's proposal also addresses this second area of concern.

Our existing trade laws with respect to foreign trade agreement violations, import relief, countervailing duties, and unfair trade practices are significantly improved in the Chairman's proposed reforms. These proposed reforms, specifically for Section 201 and Section 301 cases, would give some teeth to laws that, while essentially well-intended, do not effectively carry out the objectives for which they were enacted. It is clear that many industries -- and I could single out several in Maine -- have not been well-served by Section 201 and Section 301 as they currently exist.

In order for Section 201 to be an effective trade relief measure, there must be some method for easing the process by which an industry can seek relief, and a mechanism to allow for special circumstances that require immediate action. I believe the Chairman has considered these two factors, and has taken steps to rectify the problems caused by the existing process. In general, an adjustment plan, such as the one proposed by the Chairman, would provide allowances for industries that would enhance their ability to obtain relief for legitimate import-related injuries, and structure the process to promote an industry's future international competitiveness. The "fast-track" option for perishable commodities included in the Chairman's reforms would also help agricultural industries obtain relief in a timely manner.

Section 301 must similarly be improved to combat foreign

transgressions of trade agreements. Violations of this nature have devastated many U.S. industries, and will continue to do so unless Congress acts to strengthen this measure. Again, the Chairman has recognized the principal flaws that exist in our current laws in this area, and has acted to improve Section 301 provisions. Specifically, the mandatory response provision that requires action in cases where violations have occurred will greatly enhance the effectiveness of this trade law, while time limitations would prevent a case from languishing at the hands of either the United States Trade Representative, or the President.

The proposals to streamline the process for determining a case under either Section 201 or Section 301 are needed at this time, given the delays and the ultimate failures that have occurred in the implementation of these measures, even in cases where conclusive evidence showed that affirmative action was required. The President's rejection of the ITC's recommendation to provide relief to the domestic footwear industry last August underscores this point, and demonstrates to what extent the current system does not work. Your proposed legislation would help to insulate determinations in these cases from domestic and international political influences, giving greater credence to the actual facts of each individual case. Although I have some reservations about the extent to which your proposals would remove the President from determinations in import-related cases, I wholeheartedly approve of the movement in this direction.

While the Subcommittee considers reducing the level of involvement of the President in Section 201 and Section 301 cases, it seems inconsistent to then consider a measure which would grant the President broad, arbitrary authority to reduce tariffs. Earlier this month, I contacted the Members of the Subcommittee on Trade to express my opposition to any such provision, due to its potential impact on many domestic industries, particularly American shoe producers. For years, U.S. trade policy has wreaked havoc among these shoe manufacturers, as I have seen all too clearly within my own state

of Maine. The inroads that have been made by imported shoes on the domestic market have been devastating, yet the unfair erosion of the domestic footwear industry continues. Because the United States has become a dumping ground for shoes produced in other nations, it seems unreasonable to unilaterally provide for greater ease in reducing our existing tariffs without obtaining concessions from nations that obstruct the importation of U.S. shoes. I am opposed to this proposal for both the impact it would have here in the United States, and for the message it would send to our trading partners regarding the ambivalence of Congress to a rational trade policy. Clearly, tariff reductions should be linked to progress in eliminating the barriers to trade that other nations have erected.

I have recently submitted testimony to this same Subcommittee on our trade relations with Canada, and the problems that have been caused by the intense subsidization of Canadian industries by both federal and provincial governments. I would briefly reiterate my concerns that these subsidies have had a devastating effect in Maine. The fact that Canadian wood and lumber products have captured nearly 80% of the New England market, and have resulted in the closing of nearly one-quarter of Maine's lumber companies in recent years; that Canadian potatoes sold at below their market value in the U.S. have increased fourfold since 1978; and that the fishing industry must hold up under an estimated influx of $200 million in fish products from Canada, are all directly attributable to these Canadian subsidies. I applaud the Chairman's efforts to focus greater attention on the foreign subsidy issue, and to expand the definition of a foreign subsidy to include natural resource input subsidies for countervail purposes.

Along similar lines, I would like to bring to the Subcommittee's attention the provisions of a bill I have introduced that would help to rectify another onerous subsidy affecting American industries. The impetus for my legislation, H.R. 4590, came as a result of examining the 55 subsidy programs offered through the federal and provincial governments of Canada to their North Atlantic fishermen.

Of these programs, none seemed to rankle fishermen of the northeastern United States more than the off-season government payments made directly to self-employed Canadian fishermen. Obviously, this program is detrimental to the hard-working fishermen of Maine, who are largely dependent on their own wherewithal to make ends meet. My legislation would seek to clarify the definition of a subsidy to include unemployment insurance programs -- such as the one to Canadian fishermen -- where the benefit recipient is allowed to draw a substantially disproportionate amount of benefits relative to the costs incurred in participating in the program. The purpose of this legislation is to discourage foreign countries from providing direct financial assistance to specific industries under the guise of social welfare that functions as a public subsidy for the manufacture, production, or export of any product. While this legislation was introduced as a result of the fishing disputes we have had with Canada, and specifically in response to the Department of Commerce's final determination in its countervailing duty investigation of fresh Atlantic groundfish from Canada, it is my intention that the changes made by this legislation would apply to all investigations where unemployment compensation is an alleged subsidy.

In closing, I would restate my general support for the Chairman's efforts to tighten up existing trade laws, expand their scope to meet the challenges made by foreign competition, and provide a framework for a comprehensive trade policy. I am opposed to any provision which would broaden the President's tariff-cutting authority, and would urge the Subcommittee to adopt provisions which would ensure equitable treatment for all U.S. industries in multilateral talks. Finally, I am hopeful the Subcommittee will consider efforts to address unfair unemployment insurance programs established by foreign governments, and I would commend to the Subcommittee's attention the language of H.R. 4590.

Once again, I appreciate your consideration of my views on this important issue.

STATEMENT TO THE HOUSE WAYS AND MEANS COMMITTEE
SUBCOMMITTEE ON TRADE

By

John W. Mixon, Director
Georgia Forestry Commission

Mr. Chairman and members of the Committee, my name is John Mixon. I am the Director of the Georgia Forestry Commission, here as spokesman for the National Association of State Foresters representing the fifty-three state foresters of the nation and territories. We appreciate the past support of the Committee and the opportunity to appear before you to discuss the promotion of forest products.

Background Information

More lumber production capacity exists in the United States today than the market can absorb. The climate of depressed prices and subdued demand has heightened competition for customers in the United States.

It is imperative for the sake of its own survival that the forest products industry become more aggressive in export marketing. The United States has an unprecedented opportunity to expand its exports of many forest products. The United Nations Food and Agriculture Organization (FAO) projects that world demand for industrial roundwood will grow by about two percent per year for the next twenty years. According to FAO, consumption of paper and paperboard is expected to increase by seventy-five percent, wood based panels by fifty-five percent, and lumber by twenty-five percent between 1980 and 2000.

Although these projections are not necessarily accurate, they do point out prospects for growth in world forest products consumption. Much of this increase is expected to occur in the developed countries of western Europe, North America, and Japan, although demand for paper and solid wood products in developing nations is expected to increase as well.

Most countries in the world do not have the timber resources to increase production. Some will not be able to maintain their present rates. In contrast, the forest resource of the United States is increasing and its harvest levels have been remarkably stable. U. S. forests can support substantially larger harvests, even with increasing domestic demand.

As markets for forest products expand, so do opportunities for intensive forest management. In short, export markets help to stimulate forest management. Along with this, we should not lose sight of the more subtle benefits that accrue to export market development:

--Increased jobs-30,000 jobs are created for every $1.0 billion in export sales.
--Increased profits for domestic producers.
--Increased fiscal activity within the state.
--Potential to increase the tax base.
--Ability to soften the impact of the U. S. housing cycle.

The last point is particularly relevant today. Over the past five years, mill after mill has reduced from two to one shift, closed for several months at a time, or gone out of business completely. These situations could, in part, have been avoided had more firms been aggressively competing in export markets. Any mill closure has an immediate and depressive effect on management activities within its procurement area. The question then becomes, "Why did these businesses not seek to export their products?"

Many of them did not know how to export, as stated in "A Resolution on the State Role in Export Promotion" submitted by Governor Bob Graham at the Southern Governors' Conference in September of 1983.

"Although many southern firms already are participating in the international markets, others with exportable products are not. Firms,

especially smaller companies, may be reluctant to enter the export market for a number of reasons, most deriving from the complexity of transacting business across national boundaries and a lack of knowledge within the firm about how to operate in foreign markets. Their reluctance results in unrealized export trade opportunities that affect not only the firms that do not make the sales and profits potentially available to them from exporting, but also the local economy in terms of income and jobs also not realized. In the aggregate this represents an unrealized potential for economic growth, jobs and income that the South needs."

Although aimed at a southern audience, the Governor's remarks hold true for northeastern and western forest products industries as well. State forestry agencies are in the unique position to fill the niche that exists in this information gap. Taking advantage of the relationships that they have established with the industry, State Forestry Agencies can educate and facilitate industries' entry into the foreign market. The first step, however, is to train and build the confidence of foresters in their own abilities to deal with exporting.

Program Purpose

State Forestry agencies are charged with the responsibility of managing and protecting the forest resources within their states. Uncertainty about future timber markets, however, poses a significant deterrent to intensified timber management since investments need to be made decades in advance of harvest. Limited markets are an especially important constraint on private nonindustrial forests. Thus, the best incentive for increased forest management is a strong dependable demand for the products that the forest has to offer. Export markets help to stimulate forest management and subsequently provide increased opportunity for a state forestry agency to fulfill its mandate.

The Program

The Secretary of Agriculture needs clear direction from Congress to initiate a domestic and export forest marketing program. The National Association of State Foresters would be happy to work with the committee on appropriate language. This program should be coordinated with all other existing Federal and State efforts, but will fill the gap outlined above. It would direct the Secretary of Agriculture to establish and fund a $5.0 million forest products marketing program under the State and Private Forestry Program of the U. S. Forest Service. the program will:

1. Offer cost-shared financial assistance to states to assist in the establishment of marketing programs targeted to private landowners and small-to-medium sized industries. Cost-sharing requirements could be designed to provide incentives for states to enter into interstate cooperative agreements to work together on forest products trade. For example, the Lake States and the thirteen southern states could have separate cooperative agreements.

2. Assist in the transfer of technologies developed by the Forest Service's Forest Products Laboratory to industries for commercial use. One attractive technology is a process by which hardwoods can be used more extensively in the pulp and paper process.

3. Provide technical assistance to states, landowners, and small-to-medium size mills concerning forest products markets and trade procedures.

4. A third option is through an appropriation or by using a one percent assessment on the timber cut on Federal lands to be paid either by timber companies or by a transfer from timber receipts before they are paid into the Treasury. Another option is to impose a small duty on imported forest products to pay for all Federal forest products marketing and export promotion programs.

Let me again stress that the National Association of State Foresters feels this program is a positive approach in dealing with the U. S. forest products crisis.

STATEMENT OF THE
NATIONAL FOOD PROCESSORS ASSOCIATION
TO THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
OPPOSING THE
PUBLIC AUCTION OF IMPORT QUOTAS
April 18, 1986

The National Food Processors Association (NFPA) is concerned with the proposal to authorize the President to auction import quotas. The Association believes that an import quota auction system is unnecessary, potentially disruptive, and inconsistent with this country's GATT obligations. The NFPA is especially concerned that an auction of import licenses should not be authorized or undertaken for meat or meat products which are subject to import limitations under the Meat Import Act of 1979. The NFPA seeks to retain the prohibition on such an auction which is provided for in Section 1102(b)(5) of the Trade Act of 1979.

The NFPA is a non-profit trade association whose 600 member companies produce and sell approximately 90 percent of the nation's canned foods, including canned fruits, vegetables, juices, fish and seafoods, meat and poultry, soups, baby foods, and many formulated foods and food specialties, as well as other processed foods in frozen, dehydrated, and other forms.

First, at least for imports subject to the Meat Import Act--principally fresh or frozen beef and veal--we know of no need for an auction system. We have not heard any claim that the proposed auction system is necessary to cure some defect in the operation of that Act. Those importing meats subject to export restraint or import limitations have apparently been able to import without problems ever since enactment of the first meat import control law in 1964, more than 20 years ago.

If there are problems with the allocation of specific import quotas, these problems should be identified and dealt with separately, not with a general authorization for an import license auction.

Second, and more fundamentally, there are serious questions and reservations about the practical operation of any import license auction system.

Who would be an eligible bidder, and on what basis would eligibility be determined? The pertinent provision of the GATT Import Licensing Code, Section 14(f), states that "Any person, firm or institution which fulfills the legal requirements of the importing country shall be equally eligible to apply and be considered for a license." (Emphasis added.)

Would domestic producers or others interested in raising or distorting the price of imported merchandise be able to participate in the auction? Would successful bidders be required to utilize the licenses and import the licensed merchandise? Could hostile bidders achieve their goal of distorting the market and simultaneously recover part of their cost by selling the licensed merchandise in the export market?

To protect honest bidders from hostile bidders, i.e., those whose purpose is to disrupt the bidding or to distort the market, there should be a requirement that licensed quantities be imported and a prohibition, if possible, on the exportation of the licensed merchandise or an equivalent quantity or value.

Another fundamental objection to an import license auction is that it would interject government into commercial decisions which government is not competent to make. On what basis would the government decide how to break up the aggregate quota volumes into quantities to be auctioned? On what basis of judgment would government agencies decide such questions?

Businessmen need time in which to plan production and marketing in an orderly way with assurance well in advance that they will have access to all of the articles needed to complete a product or a product line. But a government role affecting offshore procurement would result in undesirable delays and uncertainties for U.S. businessmen in their forward planning, purchasing, and marketing plans.

How far in advance of the quota period would licenses be

auctioned? Which agency would conduct the auction? Which agency would issue the licenses?

Would each businessman using auctioned articles have to become a bidder, and thus an importer of record? Alternatively, would the businessman have to support an importer at the auction?

These and other uncertainties and problems which would arise out of government interference with private contractual arrangements--on quantity, quality, and price--are not simply academic.

Domestic purchasers of imported meat--which is generally lean and low-fat beef that cannot practically be obtained from domestic producers, who produce higher quality cuts of beef--must be able to plan their production and marketing with some assurance of an uninterrupted supply of this raw material. This is particularly true for processors of canned stew or soup, who must coordinate the availability of the meat ingredient with other ingredients, such as carrots, potatoes, and other foods. How could a United States company rationally plan to meet its production requirements in the face of uncertainty whether the necessary "auctioned" licenses would be available? The cost of import licenses would be as unpredictable as the European Community's variable levy, and the cost of the finished product would likewise be unpredictable. The result of these considerable uncertainties would be higher costs to everyone, and ultimately to United States consumers.

The uncertainties arising out of such questions--about the practical aspects of an import license auction system--cloud the question of whether auctioning import licenses would be good policy.

In short, NFPA opposes the proposed import license auction system as unnecessary, potentially disruptive, and inconsistent with the interests of U.S. consumers as well as producers and distributors.

Finally, the auction of import licenses or import quotas would be inconsistent with United States obligations under the GATT and thus a source of complaint from our trading partners.

The value of U.S. tariff concessions, already impaired by the imposition of import quotas, would be nullified if government-imposed auction charges were assessed on the quota merchandise. Moreover, GATT Article VIII provides that fees shall be limited to the cost of services rendered, and "shall not represent an indirect protection to domestic products." A major reason offered in support of the auction--that it would result in higher prices on quota imports--is undercut by the GATT prohibition on that specific result. An import license auction which burdens imports with higher costs would be incompatible with the GATT for that specific reason. Also, GATT Article XI prohibits the introduction of new import charges. It has been suggested that these GATT proscriptions on additional import charges may be overridden in cases of "emergency actions" undertaken pursuant to GATT Article XIX. However, there appears to be nothing in the language of Article XIX to support that view.

In any event, any such rationale could not apply to imports regulated by special legislation such as the Meat Import Act of 1979, where there have been none of the specific findings required by GATT Article XIX. Accordingly, Section 1102(b)(5) of the Trade Act of 1979 does not permit the auction of import licenses for "meat and meat products." The NFPA recommends that the prohibition in existing law on auctioning import licenses for "meat and meat products" be retained, and that such products be exempted from an import license auction authorization in any new legislation.

It is recommended that the import license auction proposal be deleted from the trade legislation so that it may be subjected to further study if that is considered desirable. If there is to be an import license auction system, it should be justified on policy and procedural grounds. NFPA believes that an import license auction would fail any objective examination of its policy and procedural implications.

It is recommended that Congress consider the repeal of Section 1102 of the Trade Act of 1979 pending completion of such a study.

STATEMENT OF THE NATIONAL RETAIL MERCHANTS ASSOCIATION

I. INTRODUCTION AND SUMMARY OF COMMENTS

The statement present the views of the National Retail Merchants Association ("NRMA") on proposals for amending the U.S. trade laws. NRMA appreciates this opportunity to participate in the public debate on trade policy and trade law reform.

NRMA is a national, non-profit trade association composed of over 4,000 members who operate 45,000 leading department, chain, independent, and specialty stores in all 50 states. Our members employ over 3 million people and have annual aggregate sales in excess of $150 billion.

Fundamentally, NRMA is greatly concerned that the rush to enact changes in our trade laws simply will not produce the results desired by the advocates of the proposals but will greatly restrict the functioning of the American economic marketplace. There is widespread agreement that our trade deficit is caused in very large part by a combination of macroeconomic forces, including the U.S. budget deficit and, until recently, the high value of the dollar vis a vis other currencies. Corrections in those two areas will do far more to lower our trade deficit than any conceivable set of changes in our trade laws.

This is not to say that the U.S. can or should ignore unfair actions by our trading partners in the denial of access to their markets or in sales in the U.S. market. Rather, we believe that the current set of laws and the clear Congressional desire for their enforcement are essentially sufficient for the task of pursuing legitimate U.S. concerns. What is needed to combat unfair acts is determined, consistent and vigorous use of the existing laws to enforce and pursue U.S. rights and policies. We believe the Administration has demonstrated its understanding of this need and its ability to move decisively to carry out this approach. It is, however, neither necessary nor desirable to

legislate rigid requirements that can only make multilateral and bilateral negotiations more difficult and result in disruptive interference in American markets.

Specifically, NRMA is very concerned that changes to Section 201 and section 301 of the Trade Act of 1974 would result in restricting the flow of trade by making import relief and retaliation more likely in Section 201 and 301 cases. Because we believe that these changes are not justified by any serious prospect of real benefits to other U.S. industries, NRMA opposes their enactment. In addition, while we understand the appeal of the idea of quota auctions to produce revenue for adjustment programs, NRMA opposes this idea because of the enormous administrative problems that would inevitably result. In particular, we believe that auctions in the context of the textile and apparel quota program would be simply impossible to administer in any fair or reasonable way.

NRMA also opposes proposals to exclude negotiation of textile and apparel trade issues in the next round of multilateral trade negotiations to be conducted under the auspices of the General Agreement on Tariffs and Trade ("GATT"). Such a restriction would create unnecessary antagonism from textile exporting countries and would eliminate a real opportunity for the U.S. and the world to break out of the highly protectionist regime now in place for these products.

Finally, while we are not commenting here on any particular proposals related to the antidumping and countervailing duty laws, our general comments are applicable to those proposals as well. That is, NRMA generally opposes changing these laws, on the ground that the current laws are sufficient to address unfair practices and that changes to our laws may unduly complicate our international negotiating position.

II. BACKGROUND

Before discussing in more detail NRMA's reasons for these positions, putting our reasons into a proper context is

necessary. Therefore, we first briefly discuss who retailers are and what the retailing industry relies on to operate.

First and foremost, retailers deal directly with consumers. Retailers treat imports as a part of their overall merchandising programs, which are set on the basis of anticipated consumer demand and analyses of the selection, quality, availability and price goods in the market. The relative weight which is assigned to given factors varies from retailer to retailer, product to product, and year to year. In an otherwise perfect world, retailers purchase goods from those suppliers who offer the combinations of these factors which most suits their needs. The goal of the merchandising program is, of course, to assure success for the retailer, with resulting benefits to its customers and all of its suppliers, as well as to its own management and owners.

In this context, imports are not a special category. They are not placed in separate departments of a store simply because they are imports, and those who plan merchandising programs do not treat them separately. the many sources of goods from abroad are evaluated in the same way as domestic suppliers. Non-U.S. sources have certain built-in disadvantages, e.g., the higher costs of doing business with them (travel, telephone, goods transportation, etc.), the long lead times necessary for orders, their lack of flexibility on changes in order (quantities, delivery dates, cancellations, etc.), and the need to arrange payment substantially in advance of receipt of the goods. For these reasons, and because American manufacturers do a generally excellent job of providing the necessary array of goods, retailers buy the vast bulk of their goods from American suppliers. On the other hand, retailers also choose to purchase goods from a foreign supplier when, in particular instances, other factors outweigh the disadvantages.

Once a decision is made to purchase is made to purchase an item, the appropriate buyer arranges the

purchase. For an imported item, this is a more complicated process than it is for a domestic purchase. First, identifying sources of products is a more difficult task. Not only do manufacturers enter and leave the market, as with domestic producers, but they do so in numerous, far-flung countries, each with its own business customs and arrangements, not to mention the inevitable language barriers. Second, the decision to purchase must be made further in advance, often as long as a year ahead of delivery to the U.S. or the first sale to a consumer. Third, the terms of sale often involve using an irrevocable letter of credit. This holds guaranteed funds for the manufacturers and has the effect of transferring the ownership of the product to the retailer at the time the letter of credit is transferred, even though the product is not yet made. So long as the foreign manufacturer supplies the correct item at the appointed time, the money represented by the letter will be automatically transferred to it. Thus, the process is out of the retailer's hands months before the garments are even finished. This makes later cancellation of the order next to impossible.

Finally, any U.S. import restrictions must be taken account of. This factor, intervening in the normal functioning of the market, has become an increasingly important problem for retailers, adding significantly to the cost of goods to consumers, creating disruptions in supply, and restricting the choices available to American consumers.

III. SPECIFIC PROVISIONS

A. SECTION 201

Section 201 of the 1974 Trade Act provides domestic industries and certain related interests the opportunity to petition for relief from import competition when fairly-traded imports of like or directly competitive products are a substantial cause of serious injury to the industry. Import relief, which can take the form of increased tariffs or

quotas, directly affects both the price and the availability of products on retailers' shelves. Indeed, retailers frequently are among the first to feel the impact of import restrictions. Accordingly, NRMA has a vital interest in any proposal that would excessively restrict imports under Section 201, including the following.

1. Restrictions on Executive Discretion

Several proposals would restrict the President's current discretion in deciding whether granting import relief to a particular domestic industry is consistent with America's national interest as a whole. Some proposals would prohibit the President from declining to grant any relief at all when the U.S. International Trade Commission ("ITC") recommends relief. Other bills, such as this Committee's Discussion Draft, would transfer the responsibility for deciding what action to take to the U.S. Trade Representative and restrict discretion in cases where the petitioning industry commits itself to follow an ITC-approved adjustment plan.

The advocates of these proposals argue that the record of action providing import relief in Section 201 cases is unsatisfactory. Proponents of the adjustment plan option also argue that restricting executive discretion is a necessary and effective incentive to get domestic companies to agree to tough adjustment plans.

These arguments are, however, fundamentally flawed. First, Section 201 is and has been an effective remedy for domestic industries seeking to adjust to fair import competition. Since 1974, import relief has been granted as part of the Section 201 process in 13 of the 32 cases in which the ITC found injury due to increased imports, and other types of relief were provided in a number of other cases. Second, Section 201 correctly limits the circumstances under which import relief is granted, but those limitations have not been prohibitive for several industries seeking relief. Further, import relief should not be

perpetual under the fair trade circumstances addressed by Section 201.

Third, the proponents tend to equate import relief for a particular industry with the national economic interest as a whole. The decision of whether to grant relief to a particular industry must be viewed in the context of our basic market-oriented economic system, with its emphasis on keeping the flow of commerce as free and open as possible. Thus, the President's discretionary authority to balance national economic interests against (if necessary) more particularized, narrow interests should remain intact.

Although the idea of linking restrictions on executive discretion with adjustment plans may be initially appealing, the proposal is ill-advised primarily because Presidential discretion is appropriate in the context of adjustment as well as import relief generally. While there is room for more emphasis on real adjustment by the affected industries, it is not beneficial to tie the President's hands in the process.

2. Reduction Of The Causation Standard

Some proposals, such as this Committee's Discussion Draft, would amend Section 201 to provide that imports need not be a "substantial cause," but only "a cause" of injury to make import relief available, even where other greater economic injurious causes, such as a general recession, exist. Proponents argue that this reduction in the causation standard is necessary because the current standard is so high it makes relief virtually impossible to obtain. Others assert that the change would bring U.S. law into conformity with GATT.

Dealing with this second point first, the Article XIX "Escape Clause" of GATT permits import relief only if the injurious import competition is due to increased imports which result from concessions granted as part of the GATT negotiating process. Thus, a petitioning industry must, under this provision, show that a negotiated reduction in

tariffs or nontariff barriers caused the increase in imports. Any other cause for increased imports is not sufficient to justify imposition of import restrictions. This was the standard in U.S. law from 1962 until 1974, when this linkage was removed. The result is that current U.S. law is far easier to meet than the GATT Article XIX requires, and further reduction in the U.S. standards will only put the U.S. further out of compliance with our GATT obligations.

As for the more general argument that the current causation standard is simply too high, we again note, first, that several industries in fact have obtained relief under Section 201 and, second, that Section 201 provides relief against fairly-traded imports. U.S. economic strength is attributable in large part to this country's openness and a market system that forces adjustment to ever-changing economic and market conditions. Thus, there should be a relatively high threshold for granting escape clause relief. Whether Congress should provide general economic relief to companies in times of general recession is an issue that certainly merits serious consideration. But striking out against fairly traded imports is not the solution to such economic difficulties.

3. Expand Class Of Interested Parties

Some bills, such as H.R. 3777, the Energy and Commerce Committee's trade package, would amend Section 201 by giving industries that manufacture major parts or components of products which compete with imported articles standing to bring a Section 201 petition. Such an amendment makes little sense. If the industry producing the final product is not suffering serious injury from import competition, then what purpose is served in permitting manufacturers of component parts in bringing a Section 201 petition? The answer is none. In general, fairly-traded imports of specific merchandise should not be restricted unless a U.S. industry competing directly with the foreign manufacturer is seriously injured by such imports.

4. Expand Purposes Of Section 201

Currently, a domestic industry can seek Section 201 relief either to adjust to foreign competition or to switch its economic resources to other pursuits in an orderly manner. There are proposals to expand Section 201's scope to include "enhancing competitiveness" as a permissible purpose for seeking import relief. Such a proposal is truly baffling. As noted earlier, one of the primary reasons for the soundness of the U.S. economy is that its openness forces companies to adjust to remain competitive to foreign competition. Closing our markets to competitive imports will not enhance a domestic industry's competiveness.

5. Additional Factors for Determining Threat of Injury

Currently, the ITC is directed to consider all economic factors which it considers relevant in determining whether a domestic industry is being seriously injured or threatened with injury by fairly-traded imports. There are proposals to require the ITC to include new factors in determining whether there is a threat of serious injury, including the existence of preliminary or final affirmative antidumping or countervailing duty determinations, and the existence of export diversion to the U.S. of the merchandise that is the subject of the investigation.

These changes are unwise and unnecessary. First, to the extent that final affirmative antidumping and countervailing duty determinations exist, the imposition of additional duties will negate the unfair pricing or subsidization which is causing injury. Second, export diversion can already be considered by the ITC, to the extent that any party in the case has evidence that diversion is a concern.

Third, and more fundamentally, requiring the ITC to include these criteria contributes to the blurring of two distinct trade remedy regimens - one for fairly-traded imports, and another for unfair imports. The objectives of

these two regimens are very different and should remain distinct.

6. Auctioning of Quotas

The Committee's Discussion Draft suggests the adoption of a system of auctioned quotas, with the proceeds used to fund trade adjustment assistance. Although the proposal's objective is laudable and the premise that the costs of protection should be captured for useful purposes is basically sound, we are nevertheless concerned that the quota auction approach is fraught with difficulties. The administration of an auction system would inevitably require the creation of a new bureauctacy within our government and of a whole set of rules and exceptions. The vision that is brought to mind is of the entitlements program and the oil bureaucracy of the 1970's, which was widely viewed as a nightmare for all concerned.

If auctions were imposed in the textile and apparel context, the nightmare would surely be repeated. There are 72 categories of apparel products, 44 categories of textile products, separate quotas for imports from over 30 different countries, and over 3 million separate Customs entries of these products each year. An auction system would be hopelessly complex and could not take account of all of the fairness considerations that would be raised. Bad as the current textile and apparel trade system is, auctions would make it worse.

Many NRMA members are small stores, which either import directly on a limited basis or purchase from small importing firms, and we are particularly concerned about their treatment in an auction context. Insuring their access to a new U.S. auction system would be far from easy, but excluding them would surely be inequitable.

Finally, worse even than the vision of a new U.S. bureaucracy is the likelihood that a U.S. auction system would not replace foreign countries' quota distribution system. The transaction costs of a quota system would then not be transferred, but rather simply double.

Because we do agree with the objectives sought by those advocating auctions, we urge the Congress to encourage, or even require, the use of tariffs rather than quotas or other quantitative restraints, where import restrictions are to be imposed. Money raised by tariffs would be easily collected and used for adjustment purposes. NRMA is also on record in support of a small (1% or less) fee on all imports as a mechanism for funding adjustment programs.

B. SECTION 301

Section 301 of the Trade Act of 1974 gives the President broad discretion to negotiate with our trading partners to obtain their removal of unfair acts or practices which adversely affect U.S. commerce and to retaliate against foreign countries and their exporters if such negotiations are unsuccessful. Reliance on Section 301 has been successful in convincing our trading partners either to open their markets to our products and services, or to grant compensation in other products because of trade barriers that, for their own domestic political reasons, are difficult to dismantle, such as in the Japanese Leather and Leather Footwear case. From both an overall trade policy standpoint and from NRMA's own particular situation, it is vital that everyone understand that the purpose of Section 301 is not retaliation in and of itself, but the strong encouragement of our trading partners' efforts to remove barriers and to open their markets to trade. It is not, thus, an "import relief" statute and should not be misused to force imposition of import barriers that are not justifiable under the statutes and policies intended to deal with imports.

When resorting to retaliation is deemed necessary, the Administration's methodology in these cases has been to select a range of articles exported by the foreign country or countries in question and impose tariffs or quotas on those products sufficient to offset the total economic injury incurred by the United States as a result of the unfair trade practice in question. Because retailers and American

consumers are effectively innocent bystanders in these cases, and because a wide range of products on retailers' shelves can be affected, we urge both Congress and the Administration to exercise great care in taking or requiring retaliatory actions. In that vein, we offer the following comments on specific legislative proposals.

1. Mandatory Retaliation

The primary purpose of Section 301 is to encourage other countries to dismantle trade barriers, not to close our markets to goods and services, especially those unrelated to the goods or services involved in the dispute. Proposals to transform the function of Section 301 by making retaliation mandatory unless the dispute is resolved to the satisfaction of the petitioning industry are, thus, highly suspect, in our view. Mandatory retaliation would threaten to turn Section 301 into an import relief law, far from its real, useful purpose and potentially greatly burdening retailers and American consumers. Further, it is often very important to consider the broader context of U.S. trade and foreign relations, as the President may currently do. More important, shifting the function of Section 301 from a dispute resolution mechanism to a unilateral punitive mechanism undermines the possibility of achieving settlements that serve the national interest. Similarly, granting domestic industries the authority effectively to veto a negotiated settlement undermines the concept of compensation, a concept which serves the broad national economic interest and conforms to our GATT obligations.

2. Restrict or Transfer Executive Functions

There are several proposals, including this Committee's Discussion Draft, either to restrict the President's authority or to transfer it to another part of the Executive Branch, such as USTR or the Commerce Department. What this approach fails to recognize, however, are that the effects of retaliatory actions taken under Section 301 are felt in broad areas of our economy and that

the interests of all of those affected must be weighed along with the interests of a petitioning industry. Again, the President is properly positioned to take all of those interests into account, whereas individual agencies necessarily have more parochial interests. Moreover, maintaining the Section 301 mechanism in the President's office gives that mechanism the full weight necessary to convince a foreign sovereign that the trade dispute requires serious attention. Transferring the authority could, thus, actually make Section 301 less effective as a tool for opening foreign markets through negotiation.

Additionally, the proposal to shift the authority to a part of the Executive Branch is curious, at best, since the entire Executive Branch ultimately answers to the President. The USTR, in particular, is an arm of the Executive Office of the President. Transferring trade authority is not likely to produce any real changes in the outcome of proceedings but may well cause confusion among our trading partners over the importance which is given to trade issues and disruption in the regular flow of the Executive Branch deliberations.

3. Time Limits

There are various proposals, including those in H.R. 3777, to impose time limits on Section 301 cases. Proponents argue that a time limit is necessary to ensure the petitioning industry will obtain relief in some manner.

The fundamental flaw in this proposal is that it destroys a key characteristic of Section 301 - its flexibility as a negotiating tool. The Administration has already recently demonstrated that it will not tolerate foot-dragging or delaying tactics in Section 301-related negotiations; thus, mandatory time limits are unnecessary. Good-faith negotiations may legitimately require some flexibility in their timing, and mandatory time limits would disrupt this necessary flexibility.

4. Identification of Actionable Practices

Currently, Section 301 permits the President to take action against virtually any unfair or unreasonable trade practices. Nevertheless, several proposals would specify certain practices such as industrial targeting, natural resource subsidies, unfair performance requirements, and inadequate antitrust protection as actionable under Section 301.

In general, the proponents of these amendm -*- believe specification will encourage private partners to bring actions and the Administration to use Section 301 more frequently. Although not overly troublesome by itself, specification in combination with other proposals such as time limits and mandatory retaliation could significantly expand Section 301's operations and make it an "auto-retaliatory" mechanism, rather than an effective tool for negotiations. Moreover, standing alone, specification is unnecessary since Section 301 already grants the President very broad authority.

C. EXCLUSION OF TEXTILE AND APPAREL ISSUES FORM GATT NEGOTIATIONS

Because over sixty percent of our members' sales are attributable to textile and apparel products, NRMA is vitally interested in trade policies and legislative proposals which affect the future of textile and apparel trade. We are, understandably, greatly concerned about any proposals or arrangements to exclude the issue of textile and apparel trade from the next round of GATT negotiations.

This proposal is objectionable on at least two grounds. First, negotiating authority, in principle, should be as broad as possible so that this Administration (as well as future Administrations which will take over these negotiations) will not be hindered in advancing America's economic interests.

Second, and more specifically, the issue of what we and our trading partners should do about mature industries

demands serious attention. This issue will certainly be discussed in the new GATT round. Any agreements concerning mature industries should include and be related to the textile and apparel industry. This may be the best hope for finally escaping from the highly protectionist regime of quotas and related restraints sanctioned by the Multifiber Arrangement. Retailing views and concerns about the current special arrangements for textile and apparel products are well known to the Congress. Our point here is that this Committee and the Congress in general should encourage consideration of textile and apparel issues as part of a new round, with the hope that trade in those products can be brought back within the generally acceptable rules for trade.

IV. CONCLUSION

NRMA believes that very significant progress has been made, especially over the last year, to establish and pursue trade policies which will benefit the U.S. economy. The progress on reducing the value of the dollar should begin to show a real effect on the trade deficit later this year. The Administration is making real headway in its bilateral negotiations to open foreign markets and otherwise halt unfair foreign practices. And we are on the threshold of a major new round of multilateral trade negotiations, offering real hope for progress on a range of difficult issues.

Much of this progress is due to the work done by Congress to proposed actions and push the Administration into its own actions. As noted at the outset, we believe that the Administration has now demonstrated its willingness and ability to take strong and effective action on trade. NRMA urges Congress not to derail this momentum by making unnecessary and unwise changes in our trade laws. The Ways and Means Committee has demonstrated its ability to make difficult choices on trade in the past, and we look forward to your successful effort again this year.

TESTIMONY OF
NECKWEAR ASSOCIATION OF AMERICA, INC.

IN OPPOSITION TO TARIFF CUTTING AUTHORITY

TO THE
SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

April 17, 1986

Introduction

This testimony is submitted on behalf of the Neckwear Association of America, Inc. (NAA), a trade association representing the vast majority of domestic manufacturers of neckties. NAA members also include fabric suppliers.

The NAA is opposed to legislation granting tariff cutting authority to the President. Although the Administration has not specifically requested such authority, it is nevertheless part of the bill before the Subcommittee.

Tokyo Round Tariff Cuts Hurt the U.S. Neckwear Industry; Further Tariff Cuts Will Be Devastating

As a consequence of the sharp reductions in U.S. duties on necktie imports during the Tokyo Round of trade negotiations, imports of neckties have increased from a 4 percent share of the U.S. market in 1979 to 21 percent in 1985. The Tokyo round tariff cuts have been a major factor in the growth in import levels, and, consequently, the harm to the domestic necktie industry.

Indeed, the U.S. market for men's and boys' neckties has become increasingly penetrated by imports. Imports of neckties almost tripled between 1982 and 1985, from 562,000 dozen to 1.6 million dozen. In dollar terms, imports increased from $19.4 million in 1982 to $46.5 million in 1985. Over that same period, shipments of domestically produced neckties fell by about 2 percent, and the 1985 shipment level was 7 percent below the 1984 level.

The overall tremendous growth in necktie imports has caused a substantial loss in market share held by U.S. producers. As a percent of the total U.S. necktie market,

imports rose steadily and rapidly to capture an increasing share of the U.S. market. From an 8 percent market share in 1982, import penetration increased to almost 21 percent in 1985.

Tariff reductions agreed upon in the Tokyo Round and the resultant import increases have been so devastating to the neckwear industry that the industry is seeking legislation (H.R. 209 and S. 1709) which would return the duties on neckwear to the levels which existed before the Tokyo Round.

Tariffs are particularly important to the neckwear industry. They are our only protection. Unlike the rest of the textile and apparel industry which benefits from some degree of import protection under the Multifiber Arrangement (MFA), only a few necktie products are of cotton, wool or man-made fiber, the articles covered by the MFA. More than half of the neckties imported are of silk and thus not covered by the current MFA. Thus, even the minimal duties that exist are vital to our survival.

The neckwear industry simply cannot sustain any further tariff cuts at a time when the market is being deluged by imports which threaten domestic producers and their employees.

Tariff Cutting Authority Should Not Be Granted

Under present market conditions, not only in the domestic neckwear industry but in other U.S. manufacturing industries as well, this is not the time for the United States to enter into a new trade round which would result in reductions in present tariff levels. Like many other manufacturing industries, the neckwear industry is in far worse shape today than it was in 1979 when the last trade round was completed.

The NAA therefore urges the Subcommittee not to report favorably a bill that grants the President the authority to make further tariff cuts.

OFFICE OF THE CHEMICAL INDUSTRY TRADE ADVISOR

2501 M STREET, N.W., WASHINGTON, D.C. 20037 • (202) 887-1149

April 23, 1986

The Honorable Sam M. Gibbons,
Chairman
Subcommittee on Trade
Committee on Ways and Means
United States House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

HAND-DELIVERY
4/24/86

Re: Written Statement on Trade Negotiating Authority for Insertion into the Record of the April 17, 1986, Ways and Means Trade Subcommittee Hearing

The following comments are being submitted by the Office of the Chemical Industry Trade Advisor (OCITA) in lieu of oral testimony at the April 17, 1986, Ways and Means Trade Subcommittee hearings on trade negotiating authority. We request that they be inserted into the record of that hearing.

OCITA is a coalition of U.S. chemical industry associations, including the Chemical Manufacturers Association, the National Agricultural Chemicals Association, the Synthetic Organic Chemical Manufacturers Association, and the Society of the Plastics Industry, Inc. These OCITA comments are restricted to United States participation in a new Round of Multilateral Trade Negotiations (MTN) under the General Agreement on Tariffs and Trade (GATT).

Preparations are underway between the United States and other GATT signatories to enter into such a new Round of MTN in an effort further to expand world trade. OCITA believes that a new Round should address a number of issues which are crucial to the long range competitive position of the U.S. chemical industry. The emphasis of negotiations should not be simply on cutting tariffs, but rather on efforts to eliminate existing tariff and non-tariff trade barriers. These trade barriers include constraints on foreign market access, certain tariffs, trade distorting foreign investment practices, ineffective protection of intellectual property rights, and the lack of an effective international discipline for settling disputes related to international trading rules. OCITA urges that the following principles for U.S. participation in a new Round be adhered to on each of these issues.

U.S. NEGOTIATING POLICY

A new Round of MTN must foster the development of sound trading and investment practices. U.S. participation in a new MTN should include as priority objectives the elimination of trade distorting practices and the expansion of U.S export opportunities. OCITA believes that the reduction of U.S. tariff rates should not be among the primary negotiating objectives for a new MTN. The international trade interests of the United States should be given priority over foreign policy concerns in negotiating agreements during the MTN. Foreign policy concerns, other than those of a national security nature, should not affect decisions on U.S. trade policy.

Adequate and timely opportunities should be provided for U.S. chemical industry input and review during the process of establishing negotiating objectives, as well as during the negotiations themselves. Moreover, OCITA strongly urges that ample opportunity be provided for the private sector to comment, and for Congress to debate and amend any tentative agreements made in the negotiating process, before the negotiated agreements are submitted to the Congress for final approval.

MTN authority should not restrict the President from conducting separate trade negotiations with other countries during the course of an MTN. In addition, the Administration should not impair the implementation and timely aggressive resolution of actions brought under U.S. trade remedy laws during the course of MTN negotiations.

GATT DISPUTE SETTLEMENT PROCEDURES

OCITA believes that the GATT dispute settlement procedures must be improved to include binding, time-certain requirements for the resolution of disagreements on issues covered by GATT rules. Resolution of disputes already taken to GATT should be the first step in this process.

FOREIGN MARKET ACCESS

OCITA maintains that GATT signatory countries should be required to grant U.S. exporters fair access to their markets without unreasonable barriers or conditions, in exchange for their retaining relatively free access to U.S. markets.

TARIFF NEGOTIATIONS

Although the emphasis of a new Round should not be on tariff cutting, the reduction or even elimination of tariffs on certain chemical products may be appropriate, while reductions of tariffs on certain other chemical products may impose an undue burden on U.S. manufacturers. We urge, therefore, that any reductions which are proposed be well-justified, modest and phased in over a period of time.

In the interest of reaching a balanced and equitable trade and tariff agreement, the United States should negotiate changes in chemical tariffs only on the basis of request lists, rather than imposing formula cuts across the board or automatically eliminating tariffs below certain levels. Also, reduction or elimination of chemical tariffs should not be offered in exchange for concessions in non-chemical sectors. Moreover, OCITA urges that any U.S. plan to reduce or eliminate tariffs should include provisions enabling affected industries to obtain exceptions for import sensitive products. We believe that these conditions should be included in any legislation authorizing U.S. participation in the MTN and, specifically, in legislative language providing tariff negotiating authority for a new MTN Round.

In this regard, OCITA has drafted proposed legislative language (copy enclosed), which would accomplish three negotiation objectives: 1) ensure tariff reciprocity within industry sectors to the maximum extent possible; 2) ensure that the President will conduct tariff negotiations on the basis of article specific requests and offers, not formulas for across-the-board tariff reductions; and 3) provide exemptions from tariff cuts for import sensitive items. Concerning the last objective, the OCITA proposed legislative language would amend sections in Title I of the Trade Act of 1974, to:

1) Require the U.S. International Trade Commission (USITC) to determine whether a duty reduction on an article the President wishes to negotiate will harm domestic producers of a directly competitive article (The USITC will make such a determination only if it has reason to believe such harm will occur or a domestic company files a petition alleging that harm will occur);

2) Require a USITC hearing in this investigation;

3) Prohibit the President from negotiating a duty reduction the USITC determines will harm the domestic industry, unless he determines such a reduction is in the national security interest;

4) Require the President to make a public explanation for overriding any USITC harm determination; and

5) Prohibit the President from including a duty reduction in a fast track trade agreement implementing bill if the USITC determines the reduction will harm domestic industry, and the President does not override that determination.

OCITA drafted this language as an amendment to the draft Ways and Means Committee bill. The OCITA legislative language could, of course, be easily adapted to amend any other pending trade legislation, or it could be introduced independently. We urge the Subcommittee to include the concepts contained in this OCITA proposal in its trade reform bill.

FOREIGN INVESTMENT PRACTICES

OCITA believes that a GATT code on foreign investment practices should be negotiated among the signatory countries. Such a code should be based on national treatment for foreign investments and should ensure the elimination or substantial reduction of trade-distorting foreign investment practices, including:

1) Prohibitions or restrictions on foreign investment in certain economic sectors, such as chemicals;

2) Screening of foreign investment proposals by government agencies and limitations on the amounts and percentages of equity that can be owned by foreigners;

3) Performance requirements, including mandated local purchase of equipment, supplies, and services, and the share of production which must be dedicated to exports;

4) Limitations on royalties and licensing; and

5) Limitations on repatriation of earnings.

INTELLECTUAL PROPERTY RIGHTS

Finally, OCITA strongly urges that U.S. negotiators in a new Round seek binding commitments from foreign governments that they will not use inadequate intellectual property laws to distort international trade. As part of these commitments, agreements should be negotiated not only to improve the protection afforded patents, trademarks, and copyrights, but also to improve the protection afforded in practice to proprietary or confidential information and trade secrets, so that foreign nationals operating in other countries may exercise and obtain enforcement of their intellectual property rights in those countries.

The Office of the Chemical Industry Trade Advisor and its member associations appreciate the opportunity to comment on this most important subject. If there are any questions on these comments, please contact either Myron Foveaux (202/887-1132) or Gabrielle Williamson (202/887-1356), at the Chemical Manufacturers Association.

Sincerely,

Dexter Baker

Dexter Baker
Trade Advisor

Enclosure

April 1986

PROPOSED OCITA
TARIFF NEGOTIATION AMENDMENTS

Introduction - The chemical industry trade balance has declined 47 percent over the last five years.

- There are a number of products injured by imports at present tariff rates.

- Proposed tariff cuts in the MTN will further damage import sensitive products. Therefore, a requirement that import sensitive products not be subjected to tarrif to cuts should be part of the tariff cutting authority. This will affect only a small number of chemicals and will not significantly diminish the U.S. bargaining position or results.

The following two proposed amendments are intended to achieve three tariff negotiation objectives.

Tariff Negotiations Amendment

This amendment would amend section 101 of the Trade Act of 1974. The amendment directs the President to conduct tariff negotiations--

1. On the basis of article specific requests and offers, not formulas for across-the-board tariff reductions; and

2. To achieve tariff reciprocity within sectors to the extent possible.

Import Sensitive Articles Amendment

This amendment would amend several sections in Title I of the Trade Act of 1974. The amendment--

1. Requires the USITC to determine whether a duty reduction on an article the president wishes to negotiate will harm domestic producers of a directly competitive article; the USITC will make such a determination only it it has reason to believe such harm will occur or a domestic company files a petition alleging that harm will occur;

2. Requires a USITC hearing in this investigation;

3. Prohibits the President from negotiating a duty reduction the USITC determines will harm the domestic industry, unless he determines such a reduction is in the national security interest;

4. Requires the President to make a public explanation for overriding any USITC harm determination; and

5. Prohibits the President from proclaiming a duty reduction under section 101(a)(2) of the Trade Act to implement a trade agreement if the USITC determines the reduction will harm domestic industry and the President does not override that determination.

Amendment

To H.R. ____, a bill to reform the trade laws; and for other purposes.

Viz: On page 105, line 13, strike out "Section" and insert in lieu thereof the following: "(a) Extension of Authority.--Section".

On page 105, between lines 19 and 20, insert the following:

(b) Exclusion of Import Sensitive Articles.--

(1) Section 101 (19 U.S.C. 2111) is amended by adding at the end of subsection (b) the following new paragraph:

"(3) No proclamation pursuant to subsection (a)(2) shall be made decreasing a rate of duty existing on January 1, 1987, on an import sensitive article.".

(2) Section 131 (19 USC 2151) is amended by--

(A) inserting "AND DETERMINATIONS" after "ADVICE" in the caption thereof;

(B) striking out "Within" in subsection (b) and inserting in lieu thereof "(1) Within";

(C) adding at the end of subsection (b)(1), as redesignated by subparagraph (B) of this paragraph, the following new paragraph:

"(2) Upon receipt of a list described in paragraph (1), if (A) the Commission has reason to believe that the domestic industry producing an article that is directly competitive with any article on such list would be harmed by reason of increased imports of that article, or (B) a domestic producer of an article that is directly competitive with any article on such list files a petition with the Commission alleging that the domestic industry producing such article would be harmed by reason of increased imports of that article, then the Commission shall immediately initiate an investigation to determine whether the domestic industry producing such directly competi-

tive article would be harmed by reason of increased imports of that article. The Commission shall report its determinations on the basis of such investigation to the President together with its advice under paragraph (1) of this subsection.";

(D) redesignating subsection (e) as subsection (f);

(E) inserting after subsection (d) the following new subsection (e):

"(e)(1) In making its determinations under subsection (b)(2), the Commission shall consider, among other factors--

"(A) the volume of imports of the article which is the subject of investigation;

"(B) the effect of imports of that article on prices in the United States for directly competitive articles, and

"(C) the impact of imports of such article on domestic producers of directly competitive articles.

"(2) For purposes of subsection (b)(2), the term 'harm' means a harm that is not inconsequential, immaterial, or unimportant."; and

(F) inserting in subsection (f), as redesignated by paragraph (4), immediately after "advice to", a comma and "and in making its determinations for,".

(3) Section 134 (19 USC 2154) is amended by--

(A) striking out "advice concerning such article" in the last sentence thereof the following: "advice and the determination, if any, concerning such article"; and

(B) adding at the end thereof the following new sentences: "Any article with respect to which the Commission makes an affirmative determination under section 131(b)(2) shall be considered to be 'import sensitive' for purposes of this Title unless the President determines to override such affirmative determination in the national economic interests of the United States and (A) reports in writing the specific reasons for his determination to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and (B) publishes notice of his determination with an explanation of the reasons therefore. The President may not make any offer with respect to the rate of duty on an import sensitive article.".

AMENDMENT

To H.R. ____, a bill to reform the trade laws; and for other purposes.

Viz: On page 105, line 13, strike out "Section" and insert in lieu thereof the following: "(a) Extension of Authority.--Section".

On page 105, between lines 19 and 20, insert the following new material:

(b) Basis of Negotiations.--Section 101 (19 U.S.C. 2111) is amended by adding at the end thereof the following new subsection:

"(d) If the President enters into tariff negotiations under subsection (a)(1), then the President shall--

"(1) conduct such negotiations on the basis of requests and offers for changes in the rates of duty on specific articles and shall not negotiate on the basis of any formula for the reduction or elimination of duties on more than one article, and

"(2) to the extent consistent with the objective of maximizing economic benefit to the United States, conduct such negotiations to the extent feasible with the objective of obtaining comparable tariff levels within manufacturing sectors.

"The President shall not enter into negotiations under section 102 to negotiate tariff levels.".

STATEMENT OF THE HONORABLE NICK J. RAHALL, II
BEFORE THE
SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS and MEANS
April 15, 1986

Mr. Chairman and Members of the Subcommittee on Trade. As you consider legislation to reform our Nation's trade laws, I would like to bring to your attention two issues of crucial importance to our domestic coal industry, the people it employs and to regions dependent upon coal production for their economic well-being.

The first issue involves the impact increased use of imported coal into the U.S. for use primarily by the electric utility industry will have on segments of the domestic industry and the public policy questions this raises.

The second matter concerns the relationship between the amount of steel imported by the U.S. from Japan in relation to the amount of U.S. metallurgical coal exported to that country and the need for reciprocity in this trade.

With respect to coal imports, while the level of foreign coal entering the U.S. is still relatively small -- about 2 million tons last year -- there is clearly an increased interest among those electric utilities accessible by water transport in using larger amounts of imported coal. A November 1984 study conducted by Hill & Associates, an Annapolis, Maryland, consulting firm, indicated that foreign coal sales to the U.S. could exceed 10 million tons by 1990. An April 1985 study compiled by the Commerce Department estimated that by 1990, coal imports could be as high as 18 million tons. And, finally, the Energy Information Administration in a study released this month found under one scenerio that coal imports could reach 8 million tons in 1995.

Regardless of which study you use, the trend in the amount of foreign coal entering the U.S. is on the rise.

From my point of view, I believe the adverse impacts on domestic coal employment due to increased foreign coal infiltration should be addressed now, not afterwards when the damage has become irreparable. We should have learned a lesson from copper, steel, footwear and textiles. Today, we are attempting to react to the damage done to these industries due to imports when, with the benefit of hindsight, 10 years ago we had the opportunity to act to prevent their demise.

I am aware that you are seeking a "generic" approach to trade reform, however, I must reiterate my belief that legislation I have introduced to impose an $8 per ton duty on imported coal, H.R. 1905, has its place in such an effort and that other broader reforms should be made in our existing trade laws which, if adopted, would accomplish the same goal I am seeking to achieve through this legislation. In this regard, our trade remedy laws should give consideration to the difference in the cost of complying with federally imposed standards in this country compared to complying with like standards -- if they exist -- in a competing country.

The major reason the level of imported coal entering the U.S. is on the rise is due to its price advantage over domestic coal with similar characteristics. This price advantage can be attributed to a number of factors, including transportation

costs. But, in all fairness, transportation costs are not federally imposed and are a negotiable item in this country. However, federal health, safety and environment standards, and the costs of compliance to the industry with these requirements, are not negotiable and must be incurred.

The duty suggested by H.R. 1905 is intended to offset the cost advantage foreign producers exporting coal to the U.S. -- primarily Colombia and South Africa -- have over domestic coal producers due to the lack of federally imposed health, safety and environmental standards and costs in those nations and, as such, create a more equal competitive situation.

It should also be noted that no tariff is collected on imported coal today.

To give you some idea of the extreme difference in mandated coal production costs, a recent study conducted by the U. S. Bureau of Mines found that federal mine safety, health and environment standards add $5.04 per ton of coal produced in southern West Virginia, while at the El Cerrejon North mine in Colombia, these items amount to 87¢ per ton of coal. In this regard, the Bureau of Mines' study states that, "The Colombian surface coal mining industry has no regulations by which it must abide." The items which create the 87¢ per ton cost appear to be voluntarily imposed at El Cerrejon, a mine which is jointly owned by the Colombian government and Exxon, and which enjoys millions of dollars in support from the U.S. Export-Import Bank.

There is in current law a provision which would provide some relief to the domestic industry due to the differences in costs of production (section 336(a) of the Tariff Act of 1930). Under this provision, the U.S. International Trade Commission would investigate the differences in the costs of production of any domestic article and of any like or similar foreign article. Upon the results of such an investigation, the President may approve rates of duty and changes in classification necessary to equalize differences in costs of production.

However, the provision of section 336 may not be applied to any article imported into the U.S. for which a foreign trade agreement has been concluded. Since this covers most commodities, including coal which was bound free in 1947, the ITC has not conducted such an investigation since 1962.

I believe serious consideration should be given to resurrecting this provision, not only as it applies to coal but to other commodities as well. Again, comparison of production costs, and specifically those attributable to federal requirements, is the basis of the $8 per ton duty on imported coal suggested by H.R. 1905.

Along these lines, I would also suggest that section 301 of the Trade Act of 1974, which allows the U.S. to respond to certain unfair foreign practices, be modified so as to specifically take into account foreign labor and environmental practices. At the very least, section 301 should be amended to define failure

on the part of a country to meet internationally recognized labor rights as contained in Title V of the Trade Agreements Act of 1984.

Mr. Chairman, existing trade remedy laws offer U.S. coal interests no relief from imports. Both Countervailing Duty and Antidumping Investigations rely on a determination that a domestic industry is "materially injured" due to foreign subsidies or the imported commodity being sold below fair market value before remedies may be applied. In the case of a section 201 investigation, imports must be shown to be the "substantial cause of serious injury" to the domestic industry. However, under section 201, even if injury is found, any relief is at the discretion of the President. I believe this discretionary authority must be statutorily curbed.

Nevertheless, in the case of coal, even if it could be shown that Colombia subsidizes its coal production, or that Poland dumps coal, or that imports are causing serious injury to segments of the domestic industry, imports no matter how high will never cause an industry-wide impact.

This is due to the characteristics of the coal required by electric utilities in import sensitive regions; those accessible by water transport and located primarily in the Gulf and Atlantic Coastal states. Due to the type of boilers in use by these utilities and the more stringent state air quality standards imposed in the Southeast, these utilities must burn low-sulfur, low-ash and high Btu coal. From foreign sources, this coal is provided by Colombia and South Africa. In the U.S., this coal is only produced in southern West Virginia, eastern Kentucky, Virginia, parts of Tennessee and Alabama.

It is in only these areas production will be displaced due to imported coal. To illustrate this point, of the 800 million tons of coal distributed in the U.S. in 1984, 680 million tons was purchased by the electric utility industry. Of this amount, 142 million tons of this utility steam coal was produced in the above mentioned region.

For this reason, I believed the definition of "regional industry" [19 U.S.C. §1677(4)(C)] should be expanded upon to accommodate the various coal producing regions and the types of coal within those regions, e.g., metallurgical coal as opposed to steam coal, and the various electric utility regions and the location and boiler types within those regions, e.g., accessible by water transport using dry bottom boilers.

Finally, it should be noted that of the major coal-producing countries in the world, the U.S. stands alone in not imposing any protections from imported coal. West Germany, the United Kingdom, France, Japan and South Korea all have imposed constraints on coal imports to protect their domestic coal industries. A common approach in these countries is a quota system that requires consumers to purchase some percentage of their coal requirements domestically.

Mr. Chairman, to conclude this portion of my testimony, I continue to believe that the duty suggested by H.R. 1905 is in the public interest and that our trade remedy laws must take into account costs of production along with labor and environmental practices in foreign countries.

I would now turn to the second matter of concern to the coal industry.

One of the major causes of the U.S.-Japan trade deficit is the continued and aggressive exportation by Japan of steel products into this country. Despite the Voluntary Restraint Agreement which has been negotiated with Japan on steel, it appears that country continues to circumvent both the intent and scope of the agreement with respect to certain steel products.

For that matter, the Japanese have not honored the November 1983 Joint Policy Statement on Energy Cooperation issued by President Reagan and Prime Minister Nakasone, particularly as it relates to U.S. exports of metallurgical coal to Japan.

This is a matter of grave concern to myself, and other representatives of coal-producing regions. Metallurgical coal is an essential ingredient in the production of steel. The Joint Policy Statement sought to, among other items, maintain purchases of U.S. metallurgical coal over future years as steel production in Japan improved.

This agreement provided the U.S. with an element of trade reciprocity between Japanese steel imports and U.S. metallurgical coal exports. After all, the U.S. is Japan's largest market for steel products.

Since November 1983, however, we have witnessed the collapse of what was to be a two-way street on the steel and metallurgical coal trade between Japan and the U.S. Despite the fact that steel production and, subsequently, metallurgical coal demand has increased in Japan, and despite the fact that Japanese steel exports into the U.S. continue at a level beneficial to Japan, that country has slashed the amount of U.S. metallurgical coal it is purchasing while increasing its purchases of this type of coal from other countries.

Japanese metallurgical coal purchases have increased from 65.9 million metric tons in Japanese fiscal year 1981 to an estimated 72 million tons in Japanese fiscal year 1985 while, during the same period, purchases of U.S. metallurgical coal have declined from 24 million tons to 12 million tons. In effect, the U.S. share of the Japanese market declined from 36% to 18%.

Because of this situation, I have introduced House Concurrent Resolution 309 which seeks reciprocity in the steel and metallurgical coal trade between the two countries.

If the Japanese value their exports of steel to the U.S., then they should place equal value on U.S. metallurgical coal exports to Japan.

The resolution urges the negotiation of an enforceable agreement under which Japan will import U.S. metallurgical coal in quantities equivalent to that of Japanese steel products exported to the U.S. This agreement should be based on a market share basis. Japan accounts for 25% of all steel products imported into the U.S. and, as such, I believe the U.S. market share of Japanese metallurgical coal imports should be equivalent.

It should be noted that other foreign steelmakers who have a substantially smaller share of the U.S. market use U.S. metallurgical coal for a much greater share of their raw material requirements -- Brazil and South Korea being good examples.

Mr. Chairman, I would be pleased to provide any support material relating to the items raised in this statement, and commend you for your interest in the U.S. coal industry.

TESTIMONY OF CONGRESSMAN RALPH REGULA BEFORE THE HOUSE WAYS AND MEANS COMMITTEE

4/15/86 9:30 AM

Mr. Chairman, I appreciate the opportunity to testify before you today as you examine needed changes to our trade remedies. I commend your committee for undertaking this important task, made more critical by the continuing trade deficit and rising import penetration in the U.S.

I would like to limit the first part of my testimony to revisions I believe are necessary to section 201 of the Trade Act of 1974, particularly as they effect filings by the steel industry. As Vice Chairman of the Congressional Steel Caucus, difficulties the steel companies have encountered under section 201 filings have long been my particular concern.

I am certain that everyone here is well aware of the enormous burdens placed on the U.S. steel industry in recent years, due in large part to massive growth in steel imports. While the voluntary restraint programs are showing some positive relief, further assistance is needed in order to revitalize American steel production.

Certainly the super-valued dollar has caused many of the problems for the industry as it faces steel imports. I would like to focus, however, on specific changes that can and should be made to section 201 to more fairly and appropriately evaluate and fashion remedies for 201 filings.

First, the injury standard needs revision. As you know, current law requires a finding that imports are a "substantial cause" of the industries' injury before section 201 relief is triggered. This mandates the initial conclusion that imports are not less signficant than any other cause for the industry harm. Therefore, if a more significant cause is found, relief is not available under 201.

There is no reason why U.S. law should have a more stringent injury standard that GATT requires, particularly in light of the massive import problem. Article XIX, GATT's "escape clause", requires only that the imports in

question "cause or threaten serious injury to domestic producers". Consistent with GATT, I strongly agree with many others who have proposed lowering the section 201 causation standard by requiring only a finding that imports are a "cause" of injury.

Second, the time required for resolution of a 201 petition frequently works to the extreme detriment of affected U.S. industries. During the months of 201 review, the imports in question continue to flow into the United States. This not only intensifies the harm to the U.S. industry, but makes retroactive relief impossible.

I propose, as an interim relief, that, upon filing of a 201 petition, liquidation of these imports be suspended. This means that entries of the final processing of the import paperwork would not be liquidated until the section 201 complaint was resolved.

This immediate remedy does not unfairly stop import flow, but rather leaves open the option of retroactive relief, such as applying tariffs back to the point of the 201 filing. Further, the uncertainty of suspension of liquidation makes it difficult for foreign countries to take advantage of the time required to resolve a 201 complaint, as "dumping" during the time of suspension would cease to be profitable.

Thus, this interim action would preserve retroactive relief while eliminating our trading partners' all-too-frequent practice of using the 201 time period to flood our markets, thus mitigating their losses when the 201 remedy is imposed.

Third, in order to affect objective relief, the 201 process must be de-politicized. Presently, the President has the authority to grant relief under section 201. While I do not advocate eliminating his role, I do believe that this authority more appropriately lies with the U.S. Trade Representative or the Secretary of Commerce.

This will solve several problems. The present system provides a formal forum for inter-agency disagreements over trade policy. With the President responsible for the decision to grant relief, the various departments, such as

State and Treasury, insert their parochial interests into the process. This clouds this issue and makes appropriate relief for the immediate 201 complainant remote.

With the authority placed with the U.S.T.R. or Commerce, this arena is changed and the focus is shifted. While there will certainly remain many voices in the process, it will be more directed to the immediate concerns of the industry affected.

I believe that the President should maintain veto power over the recommendations of the U.S.T.R., but that his veto should carry an alternative to the relief sought. Further, I feel that various proposals for relief should should be presented to the President, so that he, in exercising his veto authority, does not have one take-it-or-leave it option.

Finally, the narrow definition of industry which is appropriate in unfair trade statutes is not appropriate in section 201 complaints. This problem was illustrated when the American steel industry recently applied for section 201 relief. The ITC divided the steel industry into a half dozen or more segments and evaluated each separately in determining its recommended remedies. Thus, affirmative injury rulings attached to some, but not to others. Only 70 percent of the industry in question was accorded relief under this process.

Under the broad purposes of section 201, such narrow definitions of industry do not adequately and efficiently address the problem. Therefore, I propose that the ITC be encouraged by statute to consider a broader definition of industry and not view as definitional precedent the narrower industry definition used in the unfair trade statutes.

The final part of my testimony concerns revisions to the U.S. antidumping law which are needed to ensure that U.S. industry is truly on a "level playing field" with competition from abroad. Three amendments to the U.S. statutes are essential to achieve this goal.

First, section 772(e)(1) of the Tariff Act of 1930 should be amended to require that, when a foreign manufacturer sells to a related party in the U.S., a reasonable profit be deducted in determining Exporter's Sales Price as defined in section 772(c).

The purpose of calculating the Exporter's Sales Price is to determine a proxy for the price that a foreign seller would have charged to an unrelated U.S. purchaser in the absence of a middleman related to the foreign seller. This is done by using the sale price of the related importer to a U.S. customer and deducting from that price all of the expenses incurred by the related party importer in selling the merchandise in the United States.

However, in making this calculation, the International Trade Administration (ITA) does not currently deduct a reasonable profit earned by the related party importer. This has the effect of inflating the Exporter's Sales Price by the amount of such profit and reduces the possible dumping margin by that amount. This means that a different margin of dumping can be determined for the same foreign exporter depending on whether he sells to a related party or to an unrelated one. In effect, it gives a foreign exporter who sells through a related party a margin to dump equal to the value of the reasonable profit not deducted from the calculation.

Every other nation implementing an antidumping law or regulation follows the practice of deducting a reasonable profit from related party prices.

The second amendment would change section 772 of the Act to permit the use of transfer prices between related parties as the basis for Exporter's Sales Price when such prices have been determined to be the appropriate basis for customs valuation purposes. This would eliminate the need to deduct the U.S. importer's selling expenses and a reasonable profit in determining Exporter's Sales Price. Administration of the antidumping law, which is presently hampered by complex calculations, would thereby be streamlined.

To continue to discourage related party importers and exporters from fabricating transfer prices, however, the amendment would retain a provision that Exporter's Sales Price would be calculated in the traditional manner whenever such calculation revealed a lower U.S. price. This protective feature would insure that related parties did not overstate their transfer prices in an effort to avoid antidumping duties.

Third, section 773(a)(4) of the Act should be revised to prevent the administering authority from reducing or eliminating dumping margins through the use of the "Exporter's Sales Price (ESP) offset".

The ITA currently deducts from the home market price, in determining Foreign Market Value, an amount of indirect selling expenses incurred in the home market. The amount of the adjustment may be equal to but not in excess of the amount of indirect selling expenses deducted in calculating Exporter's Sales Price for U.S. sales.

No statute requires such an adjustment to Foreign Market Value but the ITA has followed this practice of reducing the home market price of the foreign seller by this offset amount. The practice has the effect of reducing potential dumping margins in cases where the foreign exporter sells to a related party. There is no such offset provided for sales to unrelated parties.

None of our major trading partners provide for such an adjustment to the home market price in determining Foreign Market Value.

These three changes would significantly increase the effectiveness of the U.S. antidumping duty law, bringing it into conformity with the rules and regulations imposed on U.S. exporters by our international trading partners. For your convenience, I have attached to my testimony draft bill language incorporating these three amendments to the Tariff Act of 1930.

Thank you for the opportunity to address ways of increasing U.S. international competitiveness through revising our trade laws. I welcome your questions.

PRELIMINARY DRAFT

H.R. _____

A BILL TO REFORM CERTAIN ASPECTS OF THE U.S. ANTIDUMPING DUTY LAW TO CONFORM TO THE PRACTICE OF OUR TRADING PARTNERS

Sec. 1. Reference.

Whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a title, subtitle, part, section, or other provision, the reference shall be considered to be made to a title, subtitle, part, section, or other provision of the Tariff Act of 1930 (19 U.S.C. 1202 et seq.).

Sec. 2. Deduction of Profit from Exporter's Sales Price

Section 772(e)(1) is amended to read as follows--

"(1) commissions for or reasonable profits incurred in selling in the United States the particular merchandise under consideration, . . .

Sec. 3. Use of Transfer Prices

Section 772 is amended to add the following language at the end of subsection (c)--

"Whenever Customs appraises the merchandise entered by an exporter pursuant to section 402(b)(2)(B), the transaction value as defined in section 402(b), less appropriate deductions under subsection (d), and if less than the price computed otherwise under this section, shall be the exporter's sales price.

Sec. 4. Exporter's Sales Price Offset Eliminated.

Section 773(a)(4) is amended to add the following at the end of subsection (4)--

"except that in no event shall the administering authority deduct indirect selling expenses from foreign market value in order to offset expenses deducted from exporter's sales price under section 772(e)."

STATEMENT OF

RICHARD P. SIMMONS,

CHAIRMAN, ADVISORY COMMITTEE,

SPECIALTY STEEL INDUSTRY OF THE UNITED STATES

Mr. Chairman and Members of the Subcommittee:

I am Richard P. Simmons, Chief Executive Officer, Allegheny Ludlum Steel Corporation and Chairman of the Advisory Committee, Specialty Steel Industry of the United States. The Specialty Steel Industry of the United States believes that the U.S. trade laws do not operate effectively and thus we support efforts to strengthen their provisions. While there are many areas which warrant improvement, the specialty steel industry would like to take this opportunity to focus on a suggestion which would dramatically enhance the efficacy of the dumping statute. We therefore urge the Subcommittee on Trade to approve legislation which would provide an effective private right of action to enforce the dumping laws of the United States. Such legislation is needed to permit recovery of damages for injury sustained by dumped imports and to provide a more effective deterrent against this unfair trade practice.

The Specialty Steel Industry of the United States is a trade association representing 14 U.S. producers of specialty steels, including stainless steels, tool and die steels, superalloys and electrical steels. See Attachment 1. Specialty steels are used when special hardness and resistence to heat and corrosion are required. Essential to our national defense, they are also required to maintain the civilian economy and a strong industrial base. The domestic specialty steel industry has been found by the U.S. government to be modern, efficient, and technologically superior. Because of its high productivity, American producers are not only able to service the U.S. market but also vigorously explore export opportunities.

However, despite the industry's investment in new facilities and advanced technology, American specialty steel companies have suffered severe injury from imports. Indeed, the U.S. government has acknowledged the industry's plight by granting import relief after two separate escape clause cases, first in 1976 and again in 1983. However, the fact that the industry received relief under section 201 of the Trade Act of 1974 does not mean that such imports were fairly traded. The industry has documented that charge by bringing numerous dumping and countervailing duty cases during the past 15 years. As a result of these efforts, foreign producers in the United Kingdom, Brazil and Spain were found to have received unlawful subsidies. In addition, the industry obtained dumping orders against stainless steel wire rod from France, stainless steel

plate from Sweden, stainless steel sheet and strip from France, stainless steel sheet and strip from West Germany, and tool steel from West Germany. We have also participated in several administrative reviews of these outstanding dumping orders under section 751(a) of the Tariff Act of 1930 and have successfully appealed certain decisions in the U.S. Court of International Trade.

While we have been successful in these actions, we have only been able to obtain prospective relief. In other words, under the dumping statute administered by the Department of Commerce and the International Trade Commission, the only remedy available is the prospective assessment of special dumping duties. These duties are remitted to the U.S. Treasury. Thus, no matter how seriously foreign producers have injured domestic companies through their use of this unfair trade practice, American producers are never compensated for their loss. Moreover, aware that the penalty is entirely prospective, foreign suppliers are not deterred from dumping; they know that they need only await the issuance of an administrative order before changing their commercial practices.

For these reasons, the Specialty Steel Industry of the United States strongly supports the concept of a private right of action to enforce the dumping laws. Such a remedy would permit U.S. companies to be "made whole" after suffering injury from dumped imports. Moreover, the threat of such damage recovery would also force foreign producers, exporters and importers to be more conscious of their obligations under U.S. and international law when making commercial decisions. Indeed, importers and exporters concerned about the pricing practices of foreign manufacturers could even take protective action by negotiating indemnification provisions in their contracts for foreign merchandise.

The concept of the private right of action to enforce the dumping laws is not a new one. In fact, the authority for such a remedy has been a part of U.S. law since 1916. Unfortunately, this provision of the Revenue Act of 1916 is both unenforced and unenforceable. Despite several attempts to utilize this authority, there has never been a successful claim under its provisions. Moreover, the high burden of proof required by the 1916 Act has discouraged attempts to use it. Under the terms of that statute, a plaintiff must prove specific intent to injure or monopolize a U.S. industry. In addition, the onerous penalties -- imprisonment and treble damages -- have also undermined its availability as a remedy.

The domestic specialty steel industry urges this Subcommittee to make this private remedy for dumping into a workable provision of law. To accomplish this, we have attached suggested legislative language which would amend the 1916 Act by eliminating its criminal provisions and providing a viable means for domestic companies to obtain damages for injury sustained from dumped imports. See Attachment 2. Such recovery would be possible upon a showing that the dumping laws of the United States had been violated and that the defendant had injured the domestic company filing the lawsuit. Although such damages would be limited to the actual injury sustained, unlike the treble damage provision in existing law, they would also include the cost of litigation, including reasonable attorney's fees.

In conclusion, the Specialty Steel Industry of the United States believes that U.S. companies need a viable private right of action to enforce the dumping laws. American manufacturers injured by this unfair trade practice should be able to obtain damages for the harm incurred by dumping. Such legislation would complement traditional dumping laws administered by the Department of Commerce by permitting U.S. manufacturers to recover for past injury; however, such traditional dumping laws would not need to be replaced because their focus is on prospective relief. But perhaps most importantly, an effective private remedy would provide a meaningful deterrent to dumping, thereby ensuring that U.S. trade laws are honored.

ATTACHMENT 1

SPECIALTY STEEL INDUSTRY OF THE UNITED STATES

Allegheny Ludlum Steel Corporation
Pittsburgh, Pennsylvania

Al Tech Specialty Steel Corporation
Dunkirk, New York

Armco Specialty Steels Division
Butler, Pennsylvania

Carpenter Technology Corporation
Reading, Pennsylvania

Columbia Tool Steel Company
Chicago Heights, Illinois

Crucible Specialty Metals Division,
Crucible Materials Corporation
Syracuse, New York

Cytemp Specialty Steel Division,
Cyclops Corporation
Titusville, Pennsylvania

Coshocton Stainless Division,
Cyclops Corporation
Coshocton, Ohio

Jessop Steel Company
Washington, Pennsylvania

Latrobe Steel Company
Latrobe, Pennsylvania

LTV Steel Specialty Products Company
Pittsburgh, Pennsylvania

Slater Steels Corporation
Fort Wayne Specialty Alloy Division
Fort Wayne, Indiana

Teledyne Vasco
Latrobe, Pennsylvania

Washington Steel Corporation
Washington, Pennsylvania

ATTACHMENT 2

99th CONGRESS
2nd Session

A BILL

To amend the Revenue Act of 1916 to provide for private enforcement of the antidumping statute.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be cited as the "Antidumping Private Enforcement Act."

SEC. 2. Section 801 of the Revenue Act of 1916 (15 U.S.C. § 72) is amended to read as follows:

"SEC. 801. (a) If --

"(1) a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value; and

"(2) an industry in the United States --

"(A) is materially injured, or

"(B) is threatened with material injury, or

"(C) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise; and

"(3) a person is injured in his business or property by reason of imports of that merchandise;

such person may bring a civil action against any manufacturer, producer,

exporter or importer of such merchandise in any district court of the United States.

"(b) Upon an affirmative finding under subsection (a), the plaintiff shall recover damages, including consequential damages, for any injury sustained and shall recover the costs of the action, including reasonable attorney's fees.

"(c)(1) An action may be brought under this section only if such action is commenced within four years after the date on which the cause of action accrued.

"(2) The running of the statute of limitations provided in paragraph (1) shall be suspended while any administrative proceedings under sections 731, 732, 733, 734, or 735 of the Tariff Act of 1930, as amended, relating to the importation in question, or any appeal of a final determination in such proceeding, is pending.

"(d) Terms used in this section that are defined in title VII of the Tariff Act of 1930, as amended, shall have the respective meanings therein specified.

SEC. 3. This Act shall be effective with respect to merchandise entered, or withdrawn from warehouse for consumption, on or after 15 days from the date of enactment.

HEARINGS ON TRADE REFORM LEGISLATION---

Statement prepared for the Subcommittee on Trade,
Committee on Ways and Means,
United States House of Representatives,
by Charles H. Taquey, of Washington, D.C.
April 8, 1986

I address the Committee on behalf of no one, but myself.

Having lived through the Great Depression and fought in the ensuing war, an advocate since young age of unhampered trade among nations, a retired Foreign Service Officer, a businessman and an author, I am emboldened to present to these hearings views which otherwise would appear naive, by a statement of your ex-colleague, Mr. Barber B. Conable, Jr. When I appeared previously before the Committee on Ways and Means, June 5, 1970, Mr. Conable severely reproved my co-witness, Professor Howard S. Piquet, of the -then- Legislative Reference Service, for having hinted at the difficulty for Members of Congress to distinguish the forest of the national interest from the trees of constituents' preoccupations: "I would hate to think..." said he, "that statesmanship is inconsistent with representation of one's district."

I shall leave, therefore, to more qualified witnesses the task of commenting on detailed recommendations, although I have participated in their study and I recognize their importance; and I shall devote myself to the broad perspective: mine will be an unabashed plea for rolling back protectionism wherever one finds it. The criterion is simple, implementation might be more difficult.

In a clever little book "Shooting Ourselves in the Foot," Mr. Bernard J. O'Keef, Chairman of the Board of EG&G, writes "Free trade is not a religion from which heretics must be cast out. It is an ideal, a goal which can be reached asymptotically but never achieved, like reaching the speed of the light, or batting 1,000 or mixing the perfect martini. A completely free market is the most efficient market, the most desirable market and, in a perfect world, the most productive market for all mankind, but it is not realizable in an imperfect world, and we should realize it."

All too true. To be sure, free trade will not prevail instantly; but it is a goal, and it is vital that we keep it as our goal, if only for two reasons: one, any departure from it is totally ineffective; and, second, any departure is ethically unfair to most of the participants in the economy, including consumers and labor, and even to those whom it pretends to protect.

* * *

The Macroeconomics of the Trade Balance

The 150 billion deficit is far from being a tragedy, and even if it were, restrictions would be the wrong remedy.

An "unfavorable" trade balance is so called by an abuse of language: it is in reality a surplus of real wealth which we draw from other countries over the wealth which we export. A tale told by the French economist, Frederic Bastiat, illustrates the vanity of the prevailing notions of "balance of trade" and of "trade deficit." "Once upon a time, when ship captains were also traders, one of them bought wine in Bordeaux, France, for one million francs; he sold the wine for the equivalent of two million in London; he bought piece goods for two million in England and sold them profitably in France; according to customs records and to conventional wisdom, he was responsible for a deficit of one million in the French trade balance. An other captain,a very poor businessman, that one, bought wine for two million but sold it in England at half-price only, then, he too bought piece goods for the million he had left: thanks to his self-sacrifice the French trade accounts were, this time, in surplus by one million!"

True, this is a fiction but examination of statistics show how close it is to reality: the more prosperous the country, the deeper the "deficit:" for the United States last year, 3% of its output; Argentina, on the other hand had a 7.9% "surplus"; Brazil, 5.7%, and Mexico, $4.8%. In the past, let's look at the year 1930: the then rich countries, England, France, the Netherlands, Belgium and

Switzerland would have been poor according to conventional wisdom for they took in more goods and services than they gave out; but can one really say that Poland, Bulgaria, Rumania, Hungary, Germany, and the United States already in the grips of the Great Depression were better off with their surplus? Over a period of time, France's exportations outstripped importations solely in the 1870's when she was paying reparations to Germany, and in the 1920's when she experienced capital flight; and Great Britain had a continuously "unfavorable" trade balance during the years of her greatest affluence.

The so-called "trade deficit" is, therefore, a symptome of wealth; it may even be a cause of improved output to the extent that it reflects the importation of capital goods or the incentive of foreign competition. Moreover, in the present case, the United States capacity and willingness to absorb foreign products is the safety valve of the world economy. Socialism. bad management, laxity and corruption in many countries, as well as unfortunate encouragements received from our banks have raised international debt to such a level that there is no hope of avoiding a financial breakdown unless a settlement is at least started by a transfer of goods and services. Better inspired than in the thirties and resisting many temptations, the United States has maintained a market for distressed goods; it has done to itself and to the world as great a service as it did in the days of the Marshall Plan; history will remember it.

Do import restrictions restrict?

To be sure, the trade deficit cannot last forever; it won't, but not as the result of any direct control that we might impose on importations. Restrictive measures adopted during the last fifteen years have not discouraged importations, quite the contrary; each new one: surcharge on importations in 1970, devaluation of the dollar, tightening of sugar quotas, the multifiber agreement, steel quotas and trigger-price mechanism and the extension of the "new protectionism" of Voluntary Export Restraint to automobiles, have marked a surge of importations above exportations. This is easy to understand: the trade balance of the United States is dominated by capital flows; when an item is restricted, the cash is forthcoming to buy other items and, short of universal prohibitions which nobody advocates and that would amount fo a world catastrophe, as long as inflows of capital continue, importations must grow pari-passu. The situation of the capital-leaking countries is exactly the reverse: they can pay for their importations only by exporting and when we reduce their sales they will automatically curtail their purchases whether they announce or not an intention to retaliate, whether or not they buy less from us or from our clients. Thus, any new US import restriction sets up a chain reaction that tends to increase our "deficit" by eliminating export opportunities. The "positive" effect of restrictions on the trade balance is always doubtful; when capital flows dominate, it will certainly be negative.

The Remedy is at the Source

Clearly, to the extent that we must, and can help reverse the trade balance, the remedy for the United States resides with the capital flows. As you well know, they are determined by two factors: one is the relatively high, although decreasing, interest rate ; and the other reflects higher expectations of security, stability and profits in the United States than in other countries. Since we would not like to see confidence deteriorate, we have to concentrate on the interest rates, acting cautiously enough to avoid inflation and a precipituous fall of the dollar. Thus, we expect to ward off volatile foreign capital and to improve the competitiveness of our enterprises. Reduction of interest rates depends on the supply of, and on the demand for funds; demand for consumption, particularly through the Federal Budget must decrease and the supply, in other words savings, must increase. Needless said, decisions affecting those two factors are within the purview of your Committee: a bill that would effectively begin to balance the budget would be the best trade bill; tax legislation that discourages debt and encourage savings would be its alter ego.

* * *

Microeconomic and Social-Legal Aspects

To be sure, those lofty considerations should not prevail against the individual, worker or businessman. What do we do about the unemployed? What about threatening bankruptcy? Admittedly those are paramount concerns but since America still creates jobs in numbers beyond the hopes of other countries, one can hardly

speak of an emergency; there is time, therefore, to reexamine the concept of fairness which underlies the legal approach to international commerce and inspires the desire to "tighten" the present legislation.

"Import relief" is the name of the game; it raises the question: Who gets the relief? Fair to whom? It is almot embarrassing to rehash old truths and to enumerate the multiferous ways in which protection hurts the economy. Economists agree that protection amounts to internal redistribution and that, contrary to common wisdom, the cost of that redistribution is not borne by the foreigner but by someone at home: the consumer, obviously, but also downstream producers using imported parts, including exporters, and various industries that live on imports. More generally, if competition which injures some individual or firm benefits the economy as a whole, it is clear that keeping someone harmless from competition injures the entire community. True, one injury is highly visible whereas the others are occult; but this, instead of justifying protection for the few, should warn us of the risk of hurting the many. Unfairness of "import relief" climaxes when it gives the foreign exporters an advantage at the expense of the American consumer, turning the intended protection against itself: this is the case of all instances of "new protectionism": orderly marketing arrangements or voluntary export restraint. Not only those practices transfer overseas a part of the levy operated on the consumer, but they create a vested interest for their own perpetuation, as the Japanese unilateral decision to maintain quotas on automobiles demonstrates.

Unfair to Labor

Any rent secured through the political process by any groups--deserving as they may be--entails a cost for the collectivity as a whole, the greater for being imponderable, dispersed and generator of chain reactions. The measure is socially acceptable only if the rent greatly exceeds the cost, which is very rare, indeed. That, however, is only the beginning; the rent itself becomes negative, in other words the group is hurt by the measure intended to protect it. It is easy to show that labor, intentionally the main beneficiary, is the first victim. The greatest inequity possible is to make a promise that cannot be kept; and to be sure, in a changing world, where technologies run after one other and where every job is at the mercy not only of foreign competition but also of domestic progress, the state cannot guaranty job security. This is, unfortunately, what it seems to be doing when it grants so-called "import relief": to the extent that industries adjust to the new competitive situation, they will do it first by restructuring their plant and reducing their manpower: this has been the case of textiles, steel, automobiles and sugar in spite of promises implicitly made to labor.

A fair deal for labor cannot result from vain attempts to immobilize manpower; it should seek to increase the market's fluidity. This is the exciting goal towards which unions, jointly with industry and the educational community, and subsidiarily with the government, would be well inspired to strive. The issue, however, is all-embracing and indivisible: there is no justice in discriminating against domestic competition: its victims are no less worthy of interest than those of foreign importations. Opportunities offered by the system at present for retraining, relocating and shifting employment are admittedly defective: the broad goal is the development of continuing education. It cannot be envisaged solely for the benefit of those who lose to foreigners but if the latters' predicament brings the question into focus, they will have mightily served the interests of the country.

Competition is Best in Spite of its Cost

Hard-pressed workers can be bamboozled by cruel demagogy, but industries with their large information-gathering capabilities ought to know better than to ask for "relief." It does not take much economic research, indeed, to discover that any measure that restricts the free flow of commerce--even with the best intentions in the world, not only exposes the beneficiary to the rigidities and to the disruptions which it imposes on the economy as a whole, but it invites also businessmen to default in the competitive contest. Competition is undeniably the means of eradicating rigidities and market distortions which are, according to Mancur Olson in "The Rise and the Decline of Nations", the main pitfall of the affluent industrial society. True, from the point of view of the

of the individual enterprise, it would be most desirable to retain the advantages of competition while avoiding its cost. Such a sophisticated solution implies, however, consequences which enterprises will be reluctant to accept. For instance, relief from foreign competition would be granted under the condition that the industry introduce changes, the necessity of which has been demonstrated by the threat of competition. The provision is already in the law but no effort has been made to enforce it effectively; understandably so, for nothing but complete control of the industry would be required for such a purpose. Moreover, competition is an imponderable that defies human calculations; and nothing proves that conditions imposed on the industry as a price for temporary relief would achieve the objectives of economy in production and of customers' sales approval. One author's suggestion that "industry's feet should be kept in the fire" is not appealing.

Domestic Competition

Americans generally accept domestic competition as fair but suspect foreign competition of unfairness. Whatever the merits of individual cases, this attitude reflects, at least in part, an obsolete distinction. True, for a time, domestic competition was sufficient to maintain American industry in good health; the United States with diversified resources and cultures and with illimited space was a fertile ground for the cross-fertilization of ideas and of procedures; the very milieu was a solvent of out-of-date products, processes and tastes. In recent times, however, the standardization of culture, the uniformity of management processes have reduced America's capability to innovate spontaneously: the country is not any more a challenge to itself; the short-term outlook of financial results promoted by the tax legislation, management's hypnosis of the monthly or quarterly report compound a trend away from the long-term improvement of production. When foreign competition becomes indispensable, it would be a mistake to apply to it criteria of fairness stricter than those in effect for the domestic kind.

How Import Relief Increases Vulnerability

Now, the availability of a petition for "injury relief" affords enterprises a dangerous choice which includes an apparently easy and fair solution, unfortunately faulted in the long term. Loss of market share may have two causes: superior competition or inherent weakness: generally the two factors co-exist but since inherent weaknesses can be corrected without external intervention, they should be searched for in the first place. The temptation, however, is to claim injury first. Instead of consulting with business-minded engineers who would seek better means of fitting the product to consumers' taste, of using factors of production and of cutting down costs by reducing inventories, shaking up assembly lines and reviving distribution patterns, management will call in the legal department. The legal department is always willing to introduce a petition even if the case is moot. Now, when after months of procedure, the petition is rejected, time and money will have been lost which could have been applied to the indigenous causes of "injury"; the latter will have become compounded and the company more vulnerable; it will be more costly to remedy the inherent weakness than it would have been before a new market loss occured. When, on the contrary, the case is decided in the affirmative, the company's view that all the trouble was the result of foreign interference will be confirmed and nothing will be done to go to the root of the difficulties; the first petition will breed new ones; thus in the case of sugar, automobiles, steel, textiles and shoes, "import relief" has become an addictive drug; it has demonstrated its lack of fairness by its long-term effect on those whom it was meant to help.

Without paradox, import relief is as unfair to business, and particularly to business involved in international trade, as many measures of the statute that discriminate against it for a variety of "external" purposes, such as certain aspects of anti-trust laws, of the Corrupt Practice Act, of environment legislation, prohibition of oil and gas exports from Alaska and of California's public forests timber, as well as various embargoes imposed from time to time with indifferent success in the name of national security. If one desires an "industrial policy" or,at least a national policy sensitive to the national interest in the trade of nations, those instances would afford great opportunities for effective reforms whereas the most ingenious effort to "tighten" the present legal quagmire would produce benefits to the legal profession only, and even that may be a false hope.

* * *

Conclusion

The quandary of commercial policy is beyond tinkering at specific provisions of the statute. With the development of a new protectionism, especially of the so-called "voluntary export restraint", efforts undertaken in 1934 and 1962 to put the lid on the invasion of the national interest by rent-seekers has foundered; the Administration has even taken over Congress' log-rolling practices. Time has come for the latter to recover its real power by liberating itself of the minutiae which make it the slave of vested interests. As the late Jan Tumlir, former GATT's Director of Research, has explained, it would be sufficient to that effect to recognize openly the principle of non-discrimination now honored more in the breach than in the effect. Should the principle be entrenched in the law, the detailed task of making and implementing commercial policy could safely be left to the Executive and to the Judiciary. Such a legislation, for instance, would ban the recourse to quotas which are always difficult to enforce in non-discriminatory fashion, especially when they are left to the discretion of the exporter. Once discrimination among foreign countries is made illegal, the major potential for international-trade deterioration disappears and not only in the United States, whose example cannot fail to be followed by its competitors; last, but not least, as Tumlir puts it: "If protection against external competition is not only a form of rent-seeking but also a necessary condition for the success of rent-seeking in many other forms, then anything that makes protection more difficult to obtain reduces the return of many rent-seeking activities in relation to the return on activities that contribute to social welfare."

Tumlir asserts that it would be easier to mobilize the electorate for non-discrimination than trying to explain the fundamentals of trade: "The principle of comparative advantage" he writes "is inherently difficult to understand. It is difficult for a politician (and impossible for an economist) to explain to any sizeable group of people that in restricting imports we hurt ourselves, let alone that a unilateral liberalization would benefit us, regardless of what other countries are doing." Yet, it is not written in heaven that humanity must suffer forever under the mercantilist delusion and the risks of war that it carries; the faulty language of "favorable" and "unfavorable" balance of trade, of "advantages" and "concessions", of "conquest" and "loss" of markets may still be spoken in Geneva but it does not have to prevail forever in American parlance; much progress has been made since the Hawley-Smoot tariff, and there is no chance that we shall return to the Tariff of Abominations.

There remains, however, much to do and one can only wish that the debate emerge before the public so that, following some electoral campaign, terms will be clarified, non-discrimination in matters of trade will be accepted as a first step and free trade, the best approximation to fair trade in this imperfect world, will shine brightly at the end of the tunnel.

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Statement submitted by David J. Steinberg, President, U.S. Council for an Open World Economy, to the Subcommittee on Trade (House Committee on Ways and Means) concerning trade reform legislation
April 17, 1986

(The U.S. Council for an Open World Economy is a private, non-profit organization engaged in research and public education on the merits and problems of developing an open international economic system in the overall national interest. The Council does not act on behalf of any "special interest".)

Concerned over the inadequacy of all proposals to date (from Congressional, Administration and other sources outside this Council) for trade-policy initiatives and trade-policy legislation per se, I submit the following views on the trade-reform draft bill now under consideration by the Subcommittee on Trade (the "Comprehensive Trade Reform Act of 1986"). The points discussed are those to which our Council has given considerable attention over many years and on which it has had time to develop definitive positions.

I applaud the bill's overall trade negotiating objectives -- especially "to achieve a more open, fair, and nondiscriminatory international trading system with respect to goods, services, and related foreign investment," and "to obtain equitable and reciprocal competitive opportunities, in general as well as in individual sectors, for United States manufacturing, mining, agriculture, and services in foreign markets." I regret, however, the absence of a strategy to achieve these worthy goals. The bill under discussion doesn't even get close.

Free-and-Fair-Trade Policy

The desired elimination of unfair trade practices -- those impeding U.S. access to foreign markets and those that give foreign goods an unfair advantage in the U.S. domestic market -- will not be achieved in sufficient measure through the proposed utilization of Section 301 and other provisions of this bill. "Equitable and reciprocal competitive opportunities" in individual sectors are not likely to be secured and sustained except in the framework of a strategy to achieve full reciprocity across the board -- meaning programmed progress toward the optimum in reciprocity. That is, the programming of free trade itself, with no exceptions for any products or other sectors. Nor should any trade practice be exempt. Totally fair trade, in fact, is not obtainable except through a strategy to secure totally free trade. Conversely, totally free trade is not obtainable without a strategy to secure totally fair trade. I have developed this thesis in many presentations to the Subcommittee on Trade and other Congressional committees over many years. Reciprocal ratcheting of trade barriers, notwithstanding the original intent of getting them lowered and ultimately removed, would be the likely result of the Section 301 and other provisions of this bill.

Industry-Adjustment Policy

Although I have long advocated requirement of a coherent industry-adjustment strategy as the framework for any request for import restriction in "escape clause" cases, I do not support the proposed Section 201 reforms dealing with the "industry adjustment plan" option. There should indeed be an industry-adjustment plan including assessment of all problems impeding the industry's international competitiveness and "a comprehensive strategy for facilitating the

industry's adjustment and for enhancing its international competitiveness," but this should not be just an option. It should be an indispensable requirement, and should inter alia entail a reassessment of all U.S. statutes and regulations materially affecting the industry's adjustment capabilities.

Presidential Authority

I also object to the proposed lessening (in some cases, decimation) of Presidential authority in cases involving possible import restriction. The President's authority to protect and advance the national interest must not only be maintained; it should be made more constructive and credible. It should be made a more effective instrument for carrying out the intent of the legislation Congress passes (and the President signs) in this field, and always in a way that serves the total national interest while addressing the sectoral needs that may have inspired various provisions of that legislation.

Transferring authority from the President to the U.S. Trade Representative (as this bill proposes to do in various respects) violates the principles of sound, effective Executive administration in this field. It also clashes with the reality of administrative accountability -- namely, the fact that the USTR is an appointee of the President, serving at the President's pleasure and fully accountable to the President. The USTR, even with the additional power the bill would give this official, will not (at least not for long) place the President in an embarrassing position, or a position where the President is forced to act in a way the President does not want to act.

More forceful Congressional representations to the Administration -- for example, via more-incisive, more-frequent hearings involving the USTR and certain other Cabinet officers -- would be a more effective, more judicious course to pursue for getting the Administration to be more responsive to Congressional concerns.

"National Security" Clause

I reserve explicit judgments concerning other provisions of this bill, except to conclude this testimony with support for implementation of the Nairobo Protocol of the Florence Agreement, and a comment on the "national security" clause of the trade legislation.

For many years, I have waged a lone campaign to reform the "national security" clause -- explicitly, to require that, if imports of a product are found to be threatening the mobilization base with respect to that product, the President must institute a balanced strategy to correct such impairment. Such a strategy must include the option of restricting such imports, in the framework of a balanced effort to ensure adequate strength in that sector of the mobilization base. The response to impairment should not be confined (insofar as legislative requirement is concerned) to a Presidential obligation to restrict the imports. The only remedy required by current legislation as well as by the proposed bill is import restriction.

I support a time limit for Presidential decision on whether corrective government action is necessary in "national security" cases. The proposed 60-day limit may be appropriate; 90 days might be a better choice. Presidential action (if such action is necessary) should be proclaimed within 30 days, not the 15 days in the bill -- but (as I noted earlier) should not be limited to import restriction.

TESTIMONY OF

ALLAN EBERT

PROGRAM ASSOCIATE

WASHINGTON OFFICE ON HAITI

Mr. Chairman and Members of the Subcommittee

I welcome the opportunity to submit the following testimony on behalf of the Washington Office on Haiti for the current Hearings on Unfair Trade Practices.

Washington Office on Haiti is a non-profit, public education and human rights monitoring organization. It was founded in September, 1984. The Director is Fritz Longchamp, a Haitian, who, until February 7th, 1986, when the dictator Jean-Claude Duvalier fled to France, was in exile in the United States. The following testimony is based on a March 11th to 24th, 1986 fact-finding mission to Haiti by myself and my co-worker at the Washington Office on Haiti, Beverly Bell. One major objective of this mission was to assess the current conditions of workers there, as well as to assess the likely reactions of employers and corporations, many of which are U.S., to the dramatic change in the political climate.

The Washington Office on Haiti views labor rights as human rights, and labor repression as an unfair trade practice. It is our belief that corporations in Haiti, some 200 of which are U.S.-owned or U.S.-affiliated, derive an unfair competitive advantage over domestic corporations and corporations in other countries by the denial of internationally recognized labor rights, namely the right of association, right to organize and bargain collectively, a prohibition on the use of forced or compulsory labor, a minimum age for the employment of children, and acceptable conditions of work with respect to wages, work hours, and occupational safety and health.

Despite the collapse of the Duvalier family dictatorship and the public statements of the new Conseil National de Gouvernement

(hereinafter, CNG), I am deeply dismayed by the lack of any noticeable improvements in the area of workers rights and there was no indication of any improvements in the near future.

It is very important at this point to digress briefly and put into context the labor rights situation in Haiti, afterall, twenty-nine years of a brutal, repressive dictatorship ended on February 7th, 1986 and workers were presented with a unique oportunity to improve their working conditions and impoverished standards of living.

Labor organizing began to develop in Haiti forty years ago. Despite the hostile regimes of Dumarsais Estime and Paul Magloire, unions began to organize after World War II and by 1957, when Francois "Papa Doc" Duvalier came to power more than twenty trade unions and associations existed in Haiti. But "Papa Doc", and after 1971, his son Jean Claude "Baby Doc", crushed the trade union movement.

The last independent trade union to exist for any period of time was the Union Nationale d'Ouvriers d'Haiti (UNOH). But "Papa Doc's" government raided its headquarters and destroyed all records of the union in January 1958. Its General Secretary was imprisoned. UNOH was then converted into an offical government union called Force Ouvrier et Paysanne d'Haiti (FOPH).

Attempts to organize independent trade unions in the 1960's resulted in the arrest, beating, and lengthy imprisonment of the organizers.

In the summer of 1979, an international delegation composed of trade union representatives from Venezuela, the Dominican Republic, and Canada visited Haiti to encourage the development of a labor movement. Through this encouragement the Autonomous Confederation of Haitian Workers (CATH) was established. Taking advantage of a temporary relaxation of the dictatorship of Jean Claude Duvalier, CATH began to organize in the many assembly industries, mostly U.S. owned through Haitian partners, which had been established in the early 1970's. In September 1980, workers called their first strike at four assembly plants. In November 1980, as part of a general, brutal crackdown on political dissidents, journalists, and human rights activists, the strike was crushed and the union disbanded. In this

sweep, 60 trade union leaders were arrested and detained (some held for many years) and approximately 250 workers were fired.

By 1982 the U.S. Department of Labor could only describe the labor movement in Haiti in the following terms:

> "The organized labor movement in Haiti is almost non-existent. All unions, except one, which is directly controlled by the government are outlawed. Little in the way of trade or collective bargaining exists and strikes are extremely rare. Unions must obtain recognition from the Ministry of Labor and conform to the labor code which provides for a direct government role in labor disputes. There is a long history of labor repression in the labor movement of Haiti."

The Government did permit the founding in January 1984 of the Federation of Union Workers, which was tightly controlled and accommodating to the Duvalier regime. This Federation was not organized in the export-oriented assembly industry. Overall, less than one percent of Haitian workers were in unions of any kind when the Duvalier dictatorship collapsed on February 7th.

Today, workers in Haiti are enthusiastically determined to improve their abysmal standards of living through organized and independent trade unions. Many new unions and associations are coming together, particularly in light of Lt. Gen. Henri Namphy's public policy statements on February 10th and 25th, when he underscored the right to form independent trade unions. In practice, nevertheless, workers are still not free to organize and demand higher wages or better working conditions without jeopardizing their jobs and even their personal safety.

I want to draw your attention to the following three instances of labor rights abuses which exemplify a continuing, post-Duvalier, widespread disregard for the right of Haitian workers to organize, and which also negatively reflect upon the operations of U.S. corporations overseas.

The testimony which follows is that of a former employee of the Fabnac Company in Port-au-Prince. Fabnac is a subsidiary of Mews Corporation, owned and operated by a Duvalierist, Fritz Mews. Fabnac produces, among other things, Fab detergent and other types of soap.

He said he worked in temperatures of 35-45 degrees Centigrade (95-113 degrees Fahrenheit). All day he had to breath in plastic and chemicals without protection. The noise in the factory, according to him, "surpassed all normal decibels." He received $3.00 per day.

After many meetings, Fabnac employees formed the Syndicat Des Ouvriers de la Fabnac (Union of Fabnac Workers). They informed management of this move in a letter to the manager of the company, the Ministry of Social Affairs, and the press. In the letter they very specifically stated that they were not trying to create trouble but to put forth specific, legitimate demands.

Instead of respecting their right to organize, as embodied in Article 24 of the 1983 Haitian Constitution and echoed in Gen. Namphy's public pronouncements, the following events took place:

> "We delivered the letter to the press, the management, and the Ministry of Social Affairs at noon. To our great astonishment, by 3:00 p.m. they had fired all of those who had joined the union, six of us in the Syndicat des Ouvriers de la Fabnac and others who were affiliated with the union.
>
> "That afternoon all union members at Colgate, an affiliate of Fabnac were fired. Then the management discovered a list of names of workers in the technical department, belonging to one of the union members. The syndicalist had left the list in an office, but managment would not allow him to go back and to get his belongings. All the workers on that list were sent home that afternoon and the department was closed down on the pretext that the machines had broken down.
>
> "The next day, March 12, the management formed its own union with three members: three heads of departments in the factory. This was something that was condemned even under the work code established under Duvalier.
>
> "This same day, under the pretext that those who had been fired the previous day would return to create trouble, three truckloads of Leopards [anti-guerrilla troops] and Cassernes Dessalines soldiers arrived at Mews with automatic arms - machine guns, Uzis, M16s and galliles.
>
> "All of us syndicatlists have been fired but nothing has worked thus far. In fact, during this time the management has put pressure on the workers in the factory, offering them money to join their own union and threatening to fire workers if they don't accept to join."

Also interviewed was a worker from Performance Footwear, which is a subsidiary of Stride-Rite Footwear in Boston, Mass. Workers at

Performance work from 6 a.m. to 3 p.m., usually without a break. Sometimes they work 6 days a week but never do they average more than $15 per week.

At Performance the workers demanded a revision in the piece rate. They get paid by the case of shoes, each case containing twelve pairs of shoes sewn on a machine. According to the worker interviewed, "Everyone in the factory knows that Stride-Rite factory in Boston had established a payment of $1.60 per case. But here we receive only $.35 per case." His testimony continues:

> "We began demanding a small increase in our wages on March 4th. We wanted the rate for machine sewn shoes to be increased to $.50 [per case].
>
> "The boss - an American, Burt Nelson - had already issued a paper stating that wages would increase March 14th. But when we went to speak with him, he asked for another delay. We said we didn't agree.
>
> "At that time we decided to form a union. We posted a notice on the front door of the factory. The department boss saw it and let us know that he wanted to form a union too.
>
> "I had been chosen as the lead of the union. Jean Robert [not his real name] is the Vice-President. The boss realized that it was we two who were pushing the demands hardest and he fired four of us - me, Jean Robert, and two other members of the union, on Friday March 21st."

The circumstances under which the above workers were fired are reprehensible. We must keep in mind that Performance is a U.S.-affiliated company operating overseas. Instead of receiving checks on Friday, March 21, these workers were ordered into an office where the door was locked and civil militia stood at their sides with loaded revolvers. They were then forced to sign letters of resignation.

The final instance involves a Haitian company, the Henry Deschamps Printing Comapany in Port-au-Prince. Two representatives of a newly formed union inside Deschamps factory were negotiating with managment for better wages. While negotiating, one of the representatives was fired. All of the workers began a work stoppage to protest this firing. They asked that he be rehired. The work stoppage continued and three more workers got fired. On Friday, April 11th, 65 people were

terminated and received their last paycheck. A general strike was called in protest and Deschamps shut down the factory. It is shut down as of this writing.

Also shut down due to labor disputes as of this writing are the A.C. Nielsen Company and GTE, both U.S. companies. They are threatening to leave Haiti completely, putting thousands of people out of work and causing further instability in an already fragile situation.

Effective trade union organizing is urgently needed in Haiti as a means to avoid continued labor rights abuses such as those mentioned above. The current minimum wage in Haiti is $3.00 per day, lower than anywhere else in the Western hemisphere and lower than the cost of living.

The misery and exploitation of workers in Haiti is subsidizing that country's assembly industry and its exports to the United States. Labor rights are still being repressed, despite the government's public assurances to the contrary. Workers do not enjoy internationally recognized workers rights and labor leaders have not yet gained the respect of the government of Haiti nor of corporate management, which is largely U.S., entitling them to a dignified negotiating position.

Trade with Haiti should not be viewed as an end in itself. Fair competition in such trade demands that the new Haitian government renounce labor repression and take steps to eliminate it, so as to improve the abysmal living standards of these workers and create a better climate of exchange, for producers, workers, and consumers alike.

SUBMITTED BY JOHN V. WESTBERG, PRESIDENT, AUTO METER PRODUCTS, INC., SYCAMORE, ILLINOIS

Structuring a New Order for Trade in the World Arena

Introduction
John V. Westberg

Dealing with the International Trade Crisis
Dr. John M. Culbertson

The Economic Crisis Facing America
John V. Westberg

Introduction

As a nation, we need to do a better job of thinking through the trade deficit problem. It seems that so often we find people in leadership positions trying to find new words to explain and justify our old free trade position. This kind of updated rhetoric does much to pacify public debate on the trade issue. Upon more thorough examination, however, it can be seen as nothing more than shallow, wishful thinking based on the world economic condition thirty years or more ago.

Then we enjoyed a position of competitive strength in the world market as evidenced by our trade surplus. As the years have progressed, we have lost our competitive advantage and have fallen into a position of significant disadvantage. This continual downslide in trade was inevitable as many nations gained our technical know-how while maintaining their low labor costs. Because many foreign engineers are educated at U.S. universities, and our technical professional associations (such as the Society of Automotive Engineers) are aggressively working to share all of our technical expertise, our trade disadvantage will continue until such time that foreign nations' wages and living standards rise to the U.S. level, or, more likely, we fall to theirs.

The relative deterioration in our competitive position is a real fact of life that we seem not to want to face. Our ever-worsening trade deficit drives home to us the realities of the 1980s but we refuse to listen.

Let's look at the three possible conditions of foreign trade and the associated impact of each trade condition on U.S. jobs.

1. **Trade Surplus**— In this case the U.S. would have an overall gain in jobs from foreign trade because we would be exporting more goods than would be imported.
2. **Balanced Trade**— A desired goal but in this case there would be no gain or loss in jobs. Increasing the magnitude of foreign trade while maintaining balanced trade would do nothing to increase jobs in the U.S.
3. **Deficit Trade**- As we export less than we import (deficit trade), it is obvious that the net effect is a loss of jobs. At first thought the solution might appear to be to export more so we can achieve either *balanced* trade or more desirably trade *surplus*. How realistic is the idea? Naturally with greater sales efforts we ought to be selling more exports. But could we ever sell enough to offset our gigantic trade deficit? When one considers the fact that if we can't beat the foreign competition in our own home market, how can we ever beat them in overseas sales where our products would carry an additional cost burden of ocean freight and any other applicable tariffs or duty?

Anyone willing to openmindedly look at this question will have to agree that we cannot expect to achieve any significant extra sales overseas until we can beat the foreign competition in our home market. Once we can beat the foreign competition in our home market, we will be well on our way back to balanced trade and eventually on to a trade surplus.

Obviously the big question is how can we beat the foreign competition in our own home market. To do this we would need to lower our manufacturing costs below the foreign manufacturers' costs through some combination of 1) lower wages, 2) superior productivity or 3) superior automation. What are the possibilities of our achieving this superior low-cost combination? Let's consider each of these three cost reduction factors.

1. To reduce U.S. labor costs below labor costs of Taiwan or South Korea would require wage reductions of about 90 percent (wages equal to only 10 percent of today's wages). This would be close to impossible to achieve. Wages will not contribute to a competitive advantage until they are dropped below the competitive foreign wages.
2. In recent years we have studied the many management techniques used overseas to achieve highly productive workers. One factor contributing to employee motivation in Taiwan is that the workers do not have any government paid unemployment benefits when they lose their jobs. This, and other factors, make it difficult for each U.S. employee to achieve more productive work than their Asian counterparts.
3. Automation, especially robotics, is an excellent way to reduce labor costs. One problem, however, is the sizeable costs involved in purchasing and installing such systems. After examining 1) and 2) above, it is apparent that our only hope to gain a competitive advantage lies in automation. We read today of many U.S. businesses boasting how they will achieve the competitive advantage through superior automation. Of course, this automation will have to be extra effective to offset the wages and productivity advantage enjoyed by the foreign competitor.

The big problem comes in trying to finance this superior automation. These same robotics are available to the Asian competitor, who also is enjoying a much higher profit margin on current sales. This higher profit margin gives the Asian manufacturer more capital to invest in automation. How are we going to achieve our needed superior automation when we have so much less capital to spend on it?

Dr. John Culbertson, a professor of economics and an author on the subject of international trade, addresses the problem of our world trade crisis. In his article, *Dealing with the International Trade Crisis*, he writes:

"Replacing delusions with realistic understanding is the key to

replacing the destructive patterns of international trade that now prevail with a new structure of trade that will promote economic progress."

It's going to take a lot more than our current wishful thinking to reverse our country's trade deficit problem. It will take a realistic restructuring of the world arena of manufacturing competition. Following Dr. Culbertson's article, I have submitted a solution to the trade deficit problem. As a nation, we need to look beyond the misleading connotations of "free trade" and rationally accept a plan that will allow manufacturers in each nation to function within a given portion of their domestic market on a fair level of competition. The portion of each nation's domestic market beyond this would be open to competition from manufacturers of all nations. Our goal must be to form an international trade structure that will allow manufacturers of highly developed nations to assist manufacturers in developing countries without the fear of being put out of business by their lower labor costs.

— John V. Westberg

Dealing with the International Trade Crisis

John M. Culbertson

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The economic plight of the United States is a part of a unique international trade crisis. Great shifts in the pattern of international trade are deindustrializing the United States and Europe, undercutting their economies and standards of living. The situation of the world ten years further down this road is frightening to contemplate.

This situation has developed because the United States and other Western countries have based their policies on a fundamentally erroneous theory of how international trade works. U.S. trade policies are based on the doctrine that unregulated private trade across national boundaries—misleadingly labeled "free trade"—is automatically self-regulating and beneficial to the nations involved. This false doctrine has caused the United States to invite, indeed, actively to pursue, its economic decline. For, in truth, unregulated private trade across national boundaries works to undercut the wage level and the standard of living of high-income nations. The particular circumstances of today's world make the threat not a mere theoretical one but a threat of ominous reality.

Hope for the future lies in the United States and other hitherto unrealistic nations giving up their delusions about "free trade" and adopting a realistic, a scientific, analysis of the effects of international trade in today's world. Only on the basis of such an accurate understanding of the workings of international trade and the effects of trade policies can arrangements be made for international trade that actually works to benefit the nations involved. Replacing delusions with realistic understanding is the key to replacing the destructive patterns of international trade that now prevail with a new structure of trade that will promote economic progress.

Many people assume that the automatically beneficial character of "free trade" has been decisively demonstrated by economics. This is not at all true. On investigation, this faith in "free trade" proves to be impossible to justify, and inconsistent with the evidence. The "free trade" doctrine presents a basically false picture of the actual effects of international trade in today's world.

It is not widely realized that to claim unregulated international trade to be automatically beneficial requires asserting that international trade and international competition work basically differently than other trade and other competition, asserting that they compromise a unique exception to the general laws of economics. For when international trade is analyzed in terms of the regular concepts and tools of economics, the conclusion is that unregulated private trade across national boundaries is ordinarily a damaging, and potentially a ruinous, arrangement, and a carefully designed framework of trade policies is required to permit foreign trade to be a constructive force.

Let us develop this point by considering Ricardo's famous example of a century and a half ago. An England with a high standard of living and a high wage rate opens trade with a Portugal that has a low standard of living and a low wage rate, but whose people are industrious and efficient. What are the effects?

Opening trade throws into competition peoples that had been noncompeting groups. Now that they are competing groups, "the law of one price" applies across the two nations. Low-priced goods undersell high-priced goods. Low-wage labor undersells high-wage labor. Goods made with low-wage labor undersells goods made with high-wage labor.

Thus, high-wage English production is undersold by low-wage Portuguese production. Production shifts from England to Portugal. Industries and jobs shift from England to Portugal. England now has a great trade deficit. Its trade deficit is the counterpart of its loss of its industries and jobs. On the other hand, Portugal has a trade surplus and is taking over English industries and jobs. England's loss is Portugal's gain.

Thus, wage rates increase in Portugal and decline in England. To bring England's trade back into balance and to put English workers back to work finally requires a reduction in English wage rates and the English standard of living to equality with those of Portugal. On the face of things, this trade was very beneficial to Portugal, and very damaging to England.

Just how damaging the opening of "free trade" is to England depends on the relative sizes of the two nations and the difference between their initial living standards. If the example involved not Ricardo's Portugal, but, say, Asia, with standard of living much lower than that of England and a population enormously larger, the decline in the English standard of living occasioned by the international trade would be very great. To suffer so great and so rapid a decline in its standard of living commonly would throw a nation into political irrationality or disorder.

Yet worse, if the area with which England is economically merged by unregulated private trade has a persistently high birth rate, the resulting population growth will in the long run force the equalized wage rate and standard of living down to a very low level, to a minimum-subsistence level. Population growth unquestionably has the power to dominate all other factors and reduce people to poverty. In this event, the trade-imposed economic integration of the nations subjects England to an economic ruin imposed on it from outside, to which it would not have been subject had it not entered into "free trade" and international economic integration but had retained its economic independence.

A large decline in living standards has a chain of further effects. It eliminates the demand for the kind of goods that are produced by advanced technology. It also destroys the ability of societies to carry the overhead costs and the organizational demands of reseach and high technical expertise required for advanced technology. Advanced technology and knowledge are irrelevant to an impoverished world. The nations thus go downhill in their achieve-

ments and capabilities, moving backward down the road up which they once had advanced—as so many declining societies have done in the past.

Moreover, unregulated trade across national boundaries causes a number of kinds of destructive or degenerative competition. Just as low wages undercut high wages, lax environmental-protection laws undercut rigorous ones, lax worker-protection regulations undercut stringent ones, subsidized output undersells unsubsidized output, and so on. Each nation comes under inexorable pressure to gain or to retain jobs and incomes for its people by cutting costs and prices. Rules to maintain civilized human conditions and to protect the future become a luxury that no longer can be afforded.

It is often assumed that for goods to be cheaper shows that they were produced more "efficiently," that cheapness implies efficiency." But that is true only when the goods are produced under the same circumstances and rules—and under rules that conform to social values. Unregulated international trade throws into competition goods produced under very different rules and circumstances. Thus, in such international trade, "the price system" works perversely. It does not cause economic efficiency. It causes low wages to undercut high wages, low production standards to undercut high production standards, and neglect of the future to undercut protection of the future.

In another clarification of the meaning "efficiency," shifting production from a high-wage nation to low-wage foreign labor cuts costs, but does not increase "efficiency." It must be remembered that labor is not only an economic input, whose cost is to be minimized. Labor also is people, whose standard of living is determined by their wage level. The goal of economic policies and institutions is to raise living standards, not to lower them. Unregulated international trade—making the world a great population commune—is a system whose expected outcome is to make people cheap, to reduce the one-world standard of living to the lowest possible level.

It often is not recognized that in equalizing wage rates and throwing the peoples of different countries into competition for jobs and incomes, "free trade" has basically the same effect as "free immigration." If it would not be reasonable, say, for the United States to propose "free migration" or unlimited immigration from China, India, Bangladesh, it cannot be reasonable for it to enter into "free trade" with them. An excess of imports from low-wage nations has the same effects as would an unbalanced flow of people from them. American wage rates can be forced down either by low-wage foreign workers moving here and taking the jobs of American workers, or by the factories and jobs moving to them.

This is the picture that emerges from a straightforward application of economic analysis to international trade. Except in very special circumstances, unregulated private trade across national boundaries is destructive. Recent events fit perfectly with this interpretation. International trade is far out of balance. Industries and jobs are shifting from high-wage to low-wage regions. Some Asian nations are enjoying an extraordinary rise in jobs and living stan-

dards, and what they are gaining, the United States and the West are losing.

In Asia, people are moving up to better-paid jobs in more rewarding industries; in the United States and Europe, they are moving down to lower-paid jobs in second-rate industries, or are remaining unemployed. This is precisely the expected "adjustment process" by which living standards of Western nations are beginning their decline, a decline that is taking the United States and the West toward an outcome that is far from what its peoples are expecting. Thus, the highly touted "export-led growth" of these Asian nations is not a potential means of raising the living standards of all nations. It is, rather, a parasitic process by which industries and jobs are shifted from higher-income to lower-income nations.

If this is how economic analysis says international trade works, where does that story that "free trade" is automatically beneficial and the best possible policy come from? It rests on the assertion that international trade, trade that crosses a national boundary, works basically differently than other trade. International trade is asserted to be quite unaffected by differences in national wage rates and productions costs, so that low-wage nations would not undercut the production and the standard of living of high-wage nations.

Recent events show that this is not true. American industries are failing because their output is being undersold by foreign goods. American industries and jobs are shifting to countries where labor costs are low. No one familiar with the recent epoch-making shifts in industries and jobs could say that they have not depended on differences in national cost levels.

The erroneous assertion that international trade is unaffected by differences in national wage and cost levels is created by deducing a supposedly universal "principle" from an atypical case, essentially from a hypothetical case of *barter trade between nations*. In the case of barter trade, or trade that is forced to be in balance, a low-wage nation cannot undersell the output of the other nation, run a trade surplus, and pull away its industries and jobs—because with balanced trade it cannot export more than it imports. Thus, "the principle of comparative advantage" actually does not apply to international trade, as such. What it applies to is barter trade, or trade that is required to be in balance. The assertion that international trade has a unique self-regulating and automatically beneficial character that sets it apart from other trade is an error.

"Free trade," of course, is not ordinarily in balance. Thus, it is governed by absolute costs and prices. In "free trade," low-wage labor undercuts high-wage labor. The enormous trade deficit of the United States largely reflects such cost differentials, and the "deindustrialization of America" that they are causing.

Thus, there is no basis whatever for asserting that "free trade" increases economic efficiency. Much, probably most, present-day trade is based on national cost differentials that do not reflect efficiency. Much of this trade is destructive wage-cutting trade, not efficiency-enhancing trade. The prevalent assertion that under "free trade" the trade that exists must increase economic efficiency, or else it would not occur, can in no way be justified.

Junking the fallacious story that "free trade" depends on comparative advantage and is automatically beneficial leads to a coherent and realistic understanding of the dramatic recent economic rise of some nations and decline of others, caused by shifting patterns of trade. Interpreting recent shifts in foreign trade and the international location of industries in terms of straightforward economic analysis explains everything that is going on, the great imbalance in trade, the extraordinary shifts of industries and jobs between nations, the "deindustrialization" of the United States and Europe and the rapid industrialization of certain Asian countries. It also discloses the dismal destination toward which this process is headed.

Thus, the so-called "free trade" is a false goal for policy. It has not been, of course, the goal of Japan or other nations that have recently risen—or of the rising and successful nations of the past.

The constructive goal with which to replace the false goal of "free trade and world-wide economic integration" is balanced, mutually beneficial trade between nations, nations that preserve their independence, their sovereignty, and their ability to shape their own economic destinies." "Balanced, mutually advantageous trade between nations" is the valid goal that must replace the false goal of "free trade."

To effectuate this goal, nations in different circumstances and with different political capabilities will use different kinds of actions. The widely felt need of many nations to move toward balance in their trade has been reflected in the rapid rise of practices of countertrade, or requirements of the form, "to sell X to us, you must buy Y from us."

The arrangement that would permit the fullest development of balanced international trade that actually is efficiency enhancing and actually is based on comparative advantage is long-term trade pacts between governments that would work out patterns of trade beneficial to both of the nations.

For the United States, whose giant market makes it the target of an exploding volume of exports of low-wage nations, the first step is to impose restrictions on imports and move imports down to balance with its exports. Some further reduction in the international value of the dollar may be desirable. But those who propose to balance U.S. trade entirely by reductions in the value of the dollar seem to forget that such reductions in the dollar is not a way of balancing U.S. trade without reducing the nation's standard of living. It is the way of balancing U.S. trade *by reducing the U.S. standard of living.* And reducing our standard of living to the level that would balance our trade with Asia would bring a revolutionary change in the shape of the world, and is not at all what the people of the United States have in mind for their future.

It is difficult to have a reasonable discussion of limiting imports because of the popular habituation to the propagandistic negative stereotype of "protectionism." But in a realistic view of international trade, a high-income nation with the world's largest and most attractive market must expect as a normal thing to impose restrictions on its imports in order to balance its trade while preserving its high standard of living. For the United States to balance its trade by reducing its standard of living to a level that make it "competitive"

with the world's overpopulated nations would be self-destructive, and in the long run damaging to mankind in general.

To move the United States and the world toward a pattern of international trade that is mutually beneficial to the nations involved and that raises nations up rather than pulling high-income nations down is a great challenge. It is an immediate and critical challenge. Events are moving rapidly. Europe cannot for much longer sit with its 13 percent unemployment and its absence of jobs and hopes for youth. The United States cannot long continue closing down its major industries, running a huge trade deficit and building up an unprecedented foreign debt, while trying to support its growing population and its heavy-overhead way of life on minor and secondary industries. Great troubles are near at hand. The only basis for dealing with the situation seems to be the replacement of the fallacious and unrealistic view of international trade that recently has governed United States policy by a view that deals with the world as it is.

The Economic Crisis Facing America

John V. Westberg

The industrialized world is now on the threshold of the most significant and far-reaching changes that have occurred since the industrial revolution began. These changes are being brought about by "flexible manufacturing" or robotics. In order to enable the U.S. to invest in robotics as needed as fast as other manufacturers do around the world and to remain competitive in the world market, it is imperative that American business maintain a healthy financial condition. It has been stated that America's plants and equipment have become old and obsolete in recent years. This must be turned around. American business must be allowed to become financially strong again so that it can generate the tremendous profit reserves that will be required for robotic modernization.

One must realize that American business today is struggling for survival. We see evidence of serious economic problems when such stalwarts of American business as steel and autos find their only way to survive is to join with Japanese business.

Why has American business become weakened? One of the principal reasons has been the ever-increasing competition from Asian manufacturers who have low labor costs and modern technology. The simplistic notion that "free international trade" is good for the nation has allowed these manufacturers to put a tremendous cost/profit squeeze on American business.

Although it is an avid promoter of free market trade, America apparently does not understand how the free market functions. It is the simple, straightforward functioning of the free market system that has allowed Asian manufacturers to weaken American industry.

The free market system itself is not at fault, for it functioned superbly over the years in the building of America. The problem has occurred since foreign manufacturers, having tremendous labor cost advantages, have been allowed to compete freely with American business. This decidedly unequal competition naturally produces unequal results.

To understand this economic trade problem, one must take a closer look at how the free market functions and at competition—what it is and how it works.

In a free market the consumer is king. The consumer is free to choose the particular mix of product, design, performance, quality, cost and service that best meets his or her needs and wants. Manufacturers, warehouses and retailers are free to try to meet these needs and wants of the consumer.

When a consumer decides to buy a product, one of the most important considerations is cost. Very likely a consumer will reason that he or she has only a certain amount of money available to spend on a product and then the consumer seeks to buy the best design, performance and quality for that given amount of money. Because product cost is so important, it is easy to understand how the Asian competitor can have a sizable advantage. Low costs, combined with equal product design, performance and quality, give the Asian manufacturer an almost unbeatable advantage. The following brief analysis shows the momentous impact of low labor costs on the selling price of products.

Generally manufacturing labor costs (direct, indirect, sales, management, engineering, etc.) average approximately 25 percent of the selling price. Taxes and profit each average about 8 percent of the selling price.

typical labor=	25% of selling price
typical profit=	8% of selling price
typical taxes=	8% of selling price
value added=	41% of selling price

The remaining 59 percent of the selling price consists of payments to others for facilities, equipment, materials and/or services. Although it may appear that this 59 percent relegates labor to a minor impact on costs, it must be remembered that these payments made to others are to cover the supplier's expenses for "labor, profit and taxes." When all manufacturing costs are traced back to the recipients of the money paid for a product, we find it is only people who get the money: 1) people who did the work (labor), 2) people who invested in the factory (profit) and 3) government (people who collect a share of all profits to be spent for our common good). Thus, labor is the largest factor in determining manufacturing costs. Labor has three to five times more impact on cost than does profit or taxes.

Competition

What is it? The struggle to be better than another person or group seeking after the same goal.

Is it good? Yes. It encourages progress because it causes people to work extra hard to win a game or produce a better product at a lower price in order to survive.

Should there be restrictions on who can compete with whom? Yes. To benefit from competition, all those involved must perceive and actually have an equal opportunity at winning. High school, college and professional football each play in their own leagues among relative equals and there are exciting games at all levels. If, however, a high school team were required to play a pro team, there would be all kinds of protests that this was not fair competition. Thus, it is apparent that certain basic factors have to be identified and then used as criteria for grouping competitors fairly.

In business, as in sports, there are some general factors involved in determining the basic ability of one company to compete against another. In football each team chooses its own plays, strategies, air/ground offense balance, etc.; in business each company makes decisions on marketing, R & D, policy, manufacturing methods, capital investment, etc. These decisions determine the cost/quality/performance value of the products produced by a company. These products are then distributed to the market place to compete with other companies' products for the consumers' dollar. This all

sounds like fair and healthy competition. However, without proper grouping of competitors, a business can find itself in a situation similar to that of a high school team playing a professional team.

There is an underlying factor which is of major significance to competition. This major factor is labor cost. According to the *Wall Street Journal*, U.S. labor costs are eight to ten times higher than in such countries as Taiwan and South Korea. One can begin to see that competition between U.S. manufacturers and Asian manufacturers cannot possibly be fair.

Years ago U.S. companies had offsetting advantages of better engineering and toolmaking know-how, plants and machinery. Today these advantages have disappeared as Asian manufacturers have invested heavily in these areas.

It is often thought that the U.S. still has the advantage in marketing know-how. This is no longer the case because Asian companies now are hiring Americans to do their marketing.

Today, as one compares many American businesses with their Asian competition, one finds the American companies often struggling to hold their market share or even to stay in business. The U.S. company often reduces R & D and curtails investment in new plants and equipment to help lower costs.

Because labor costs are vastly lower in Asia and because the U.S. consumer now perceives Asian products to be of equal or greater quality and performance, the stage is set for high profit margins for the Asian companies. These high profits are then reinvested in far more engineering, new plants and machinery, making these Asian companies formidable competitors. U.S. competitors (paying the high U.S. wages) cannot begin to spend the same money for these important future-affecting investments. Each year that goes by witnesses the cumulative building of Asian business strength while U.S. business is rapidly declining.

The desperate response of U.S. manufacturers to this situation appears to the economically uninformed to be the first evidence of competition U.S. business has ever faced. Thus, it is felt that to take away Asian competition would eliminate competition among U.S. business and breed stagnation. In reality, however, U.S. manufacturers have faced fair and stiff competition from other U.S. manufacturers for a great many years. The following list shows ways in which U.S. companies compete, even without entry of Asian products into the U.S. market:

1. Competition for the best employees (must pay a competitive wage plus benefits program).
2. Competition for good delivery and low prices from suppliers.
3. Competition in product design, performance, and cost (need best design and performance with lowest cost).
4. Competition in most effective methods of production and quality control.

5. Competition for fastest delivery to customers with fewest backorders.
6. Competition for best and most cost-effective marketing, advertising and promotional programs.
7. Competition for best sales and service programs.
8. Competition for consumer dollars, not only with businesses making similar products, but with all other types of products and services on which people spend their money.

It is only as a business struggles to be best in all of the above areas of competition that it can have any real chance for long-term survival and growth. In each of these areas of competition, any company can make mistakes. This opens the door for another company (even a new start) to take business away from the existing company. This competition is very healthy and good for the U.S. consumer and American business.

Over the years, this competition within our free-enterprise system has helped the U.S. become the number one economic power in the world. In the days of fair competition, U.S. industry was economically healthy and growing. In the past twenty years, however, Asian manufacturers with their low labor costs and modern technology have been unwisely allowed to compete "heads up" with U.S. manufacturers. Many U.S. businesses are now having to "run for their lives." Many observers, with their limited knowledge of business, could not even see these eight types of healthy business competition occurring among U.S. businesses prior to the entry of Asian competition. Now, only with the entry of unfair Asian competition, can these observers begin to see U.S. business struggling to compete.

The "can do" competitive spirit of many businessmen in the face of this difficult situation today says U.S. business can still beat foreign competition. Products will have to be redesigned to use fewer parts and to be assembled much more easily in order to greatly reduce labor costs. More efficient material control and design support equipment along with the use of robotics will further reduce labor costs. This is all essential to stay competitive. However, Asian manufacturing can copy all these ideas and automate to the same extent, and they will still have the advantage through much lower labor costs.

If one feels it is paranoid to credit the Asians with the ability to copy all the improvements U.S. business makes, one should remember the many information-sharing professional societies, such as the Society of Automotive Engineers, in the U.S. These professional groups often pride themselves today by initiating promotional campaigns to become "international" in scope and membership. U.S. manufacturers' only real competitive advantage has to lie in having better ideas and designs. Yet, the U.S. manufacturers seem so willing to unwisely give away their advantage through international sharing of our ideas. While the U.S. is giving away its advantages, the low labor costs enjoyed by Asian manufacturers cannot be given away to U.S. business. This is basically a "heads" we lose, "tails" they win situation.

Competition between American businesses could still work today to return our industries to sound financial and competitive health, but not when the unfair competition of Asian manufacturers is allowed in our U.S. manufacturing arena of competition. (See Figures 1 and 2 for a graphic presentation of this problem and a proposed solution.)

Investment in business carries with it both the opportunity to succeed and the potential to fail. Normally fair competition in the free market will allow business to make only enough profit to justify the gain/risk involved. Any attempt to make extra profit would only encourage additional competition from other manufacturers. This is the basic manner in which fair competition permits and limits profits to between five and ten percent of a product's selling price.

When Asian manufacturers enter the U.S. arena of competition, they have a decidedly unfair advantage to earn unusually high profits because of their low costs. What is needed is a legal mechanism that would force the Asian manufacturers back down to the same reasonable profit that exists with fair competition between equal competitors. While the Asian manufacturers' profits are being reduced to reasonable levels by lowering their selling price, the retail price of their products would have to be comparable to the price of competing U.S.-made products. In this way fair and healthy competition between all entrants in the U.S. arena of manufacturing competition could begin.

How can each Asian manufacturer be forced to lower the selling price of his products to yield the standard five or ten percent profit while keeping the actual market price high enough to allow fair competition among U.S. companies?

One way is to impose a tariff. This method may place a restriction on the growth of foreign imports, but it would be almost impossible to determine the exact fair tariff rate for each country and product category to meet the profit/selling-price/ market-price spread previously described. Certainly we cannot depend on the loud complaints of the Asian competitors to determine when a U.S. tariff was large enough to push them down to normal profit margins.

The most effective way to achieve fair and precise control of the profit/selling-price/ market-price spread for Asian manufacturers in the U.S. market is through a proper grouping of manufacturers into fair arenas of competition. It is just like the need to establish the different leagues for grouping football teams into high school, college and pro leagues. What needs to be done is to remove the Asian manufacturers from the U.S. arena of manufacturing competition. Then, as Asian manufacturers compete only among themselves for the U.S. market, fair competition would drive their currently excessive profits down to the normal levels of five to ten percent. Then U.S. manufacturing could become healthy again as U.S. industries compete fairly among themselves.

The big question is how can Asian manufacturers be removed from direct competition with U.S. manufacturers without removing the Asian products from the shelves of U.S. retail stores. Americans have grown accustomed to a certain percentage of Asian products in their field of purchase choices. This choice should be maintained

for the consumer. Also, Asian manufacturers should be allowed to continue with their current market share, which they have earned.

There is a way that all of the preceeding "fair competition," "customer choice," and "Asian access to U.S. market" requirements can be achieved. This would require the U.S. government to pass an import control bill. This two-part bill would essentially state that:

A. All imports from countries with which the U.S. cannot compete because of low labor costs and modern technology would enter the U.S. market only through a U.S. manufacturer of that product. Thus, Ford, GM and Chrysler could import complete cars because they manufacture cars. But if Ford, GM or Chrysler wanted Japanese steel, they would have to contact a U.S. steel manufacturer who would bring in the Japanese steel.

B. These imports would be limited to a percentage of each importing company's annual sales equal to the current Asian penetration of the U.S. market for the product category.

The very essence of this bill would automatically and fairly push the Asian manufacturers back down to normal profit levels as they lowered their selling price because they competed fairly among themselves to sell to the U.S. manufacturers.

Every U.S. industry that is presently being hurt by Asian competition would be included in this endeavor to make competition fair. They also would have a chance to be involved at least in a small financial way in the flow of products from the Asian manufacturer to the U.S. consumer. A good example of this is Chrysler Corporation. They import cars designed and built in Japan by Mitsubishi. The fact that these cars flow through Chrysler does not increase the cost to the U.S. consumer. These cars sold by Chrysler cost the U.S. consumer no more than an equivalent car from Toyota or Datsun. The important difference is that Chrysler told Mitsubishi that because of Chrysler's related expenses to engineering, parts, service training, warranty, etc., Mitsubishi would have to sell to Chrysler for a lot less than Toyota would sell the corresponding car to their dealer. Of course, this was not too hard to do since the Japanese car manufacturers, because of low labor costs, are making an extra $2,500 profit per vehicle over the U.S. manufacturer. What Chrysler accomplished was to reduce Mitsubishi's excessive profit and to allow Chrysler to get in on some of the financial action—and all this at no cost penalty to the U.S. consumer.

Many U.S companies are importing at least a portion of their low-priced segment to their product line. Low-priced Asian products will continue to be available to the U.S. consumers who have a significant interest in low prices.

The second part of the proposed import bill deals with controlling the maximum percentage that could be imported by a manufacturer. The balance would then have to be manufactured in the U.S. If we assume that the U.S. consumer and the Asian manufacturers would like to maintain Asian imports at current market penetration levels, and U.S. manufacturers would not want to lose anymore market share, then a restriction could be added so that U.S. manufacturers could only import Asian products up to a maximum percentage of their total annual sales equal to the current Asian penetration of the

U.S. market. Thus, Ford, GM, and Chrysler could import up to 25 percent of their total annual sales because Asian manufacturers are now selling 25 percent of new cars in the U.S. Steel would be limited to 30 percent while U.S. textile manufacturers may possible import up to 40 percent.

By making the Asian manufacturers compete among themselves for the U.S. market while U.S. manufacturers compete fairly and aggressively with each other, economic health would be restored to American business in domestic sales. Also, American businesses would regain financial strength for the modernization needed if America is c be at all competitive in the world market. As U.S manufacturers become financially healthy again, they will not be so anxious to sell out all or a portion of their business to foreigners.

Today the U.S.is witnessing the selling of financially weakened U.S. businessed to financially strong foreigners. To buy these businesses, foreigners must obtain U.S. dollars on the International Monetary Exchange market, creating "the strong U.S. dollar." This strong U.S. dollar tends to cause an even greater rise in imports which further weakens U.S. manufacturers. Then, as more manufacturers consider selling out to foreigners, the foreigners want even more U.S dollars in order to buy these businesses. The cycle goes on and on like economic perpetual motion except for the fact that there is an end to the "game" when there are no more American owned U.S. businesses for the foreigners to buy.

The game of international economic competition is defeating American business right in our home market. It is time for America to change the rules to allow fair competition. International competitors have talked America into letting them bring their pro teams into our high school league. It is time Americans begin to stand up for U.S. manufacturers through support of a realistic and rational foreign trade policy—it is certain our foreign competitors will not! They are enjoying the winning too much!

Figure 1
View of Present U.S. Consumer Market Showing Each Arena of Competition

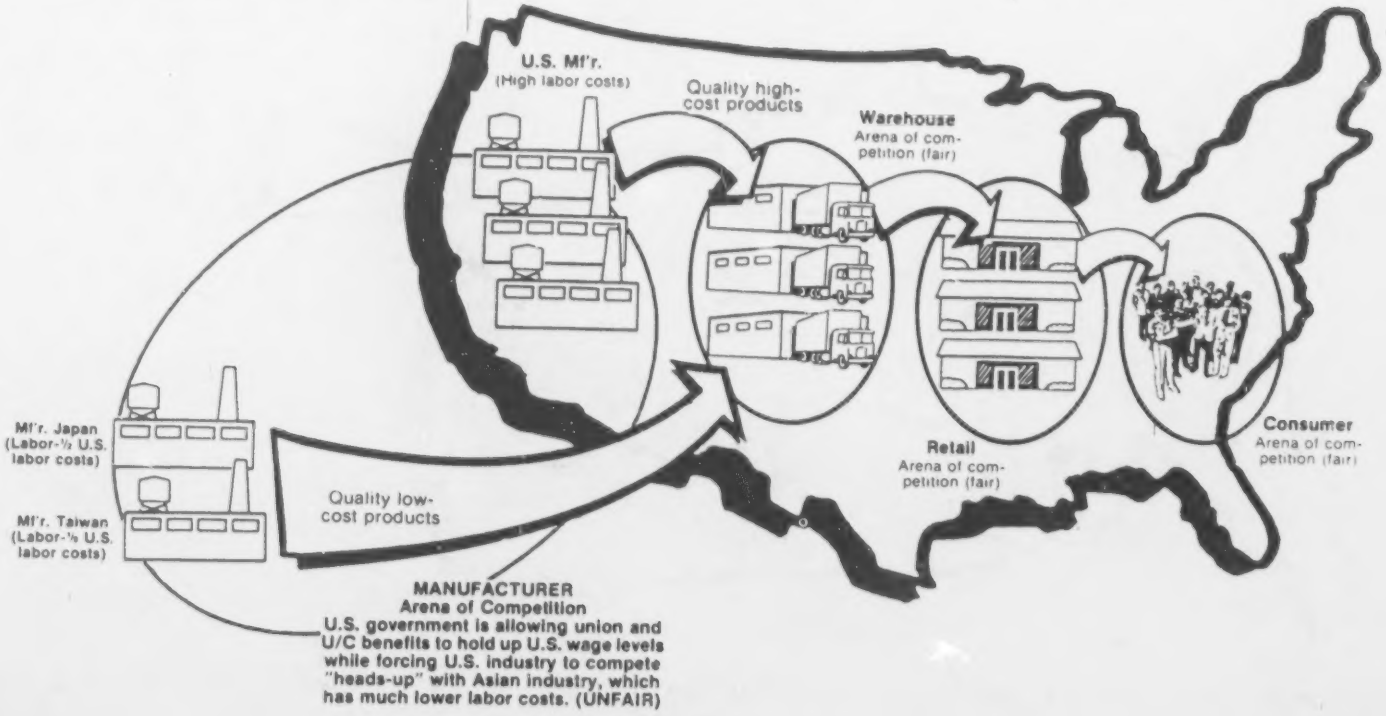
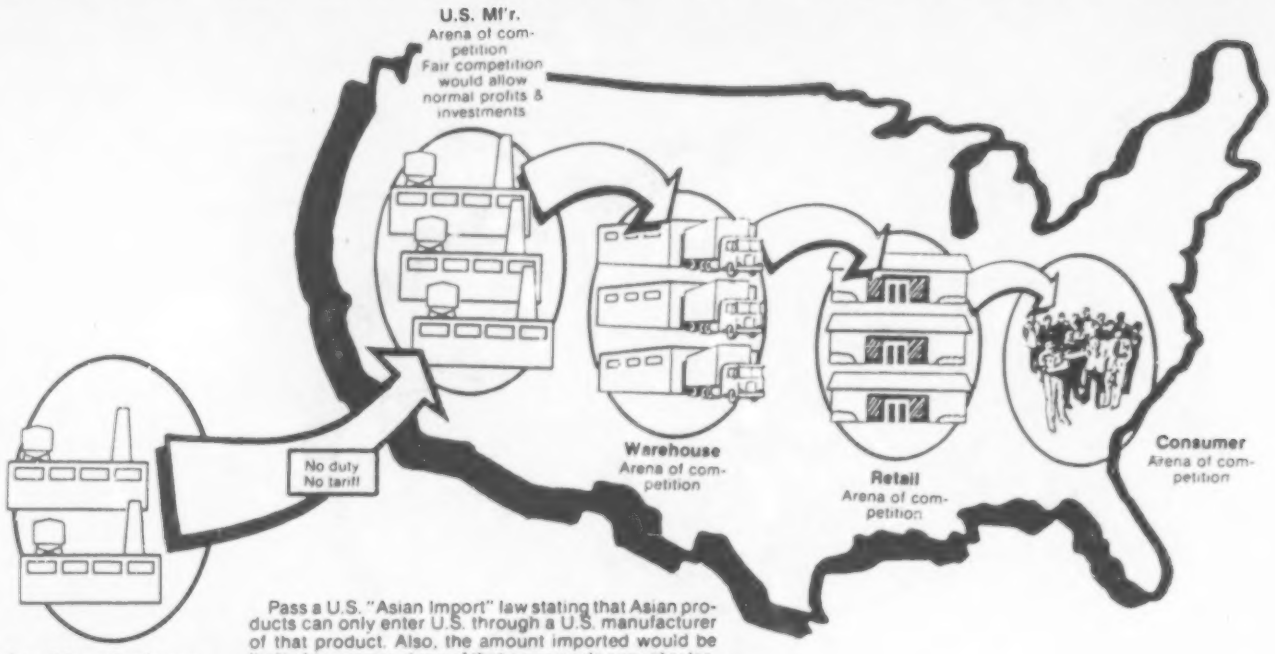

U.S. Mf'r.
(High labor costs)
Quality high-cost products
Warehouse
Arena of competition (fair)
Retail
Arena of competition (fair)
Consumer
Arena of competition (fair)
Mf'r. Japan
(Labor-⅓ U.S. labor costs)
Mf'r. Taiwan
(Labor-⅓ U.S. labor costs)
Quality low-cost products
MANUFACTURER
Arena of Competition
U.S. government is allowing union and U/C benefits to hold up U.S. wage levels while forcing U.S. industry to compete "heads-up" with Asian industry, which has much lower labor costs. (UNFAIR)

Figure 2
Proposed Solution to Give U.S. Industry a Fighting Chance in the U.S. and World Market



Asian Manufacturer
Arena of Competition
By being forced to compete among equals, Asian mf'r. profit margins would be forced back down to reasonable levels, similar to the U.S. industry.

Pass a U.S. "Asian Import" law stating that Asian products can only enter U.S. through a U.S. manufacturer of that product. Also, the amount imported would be limited to a percentage of that company's annual sales. The import percentage would be set by the federal govt. based on present U.S. market share "owned" by Asian competitors.

EXAMPLE: Chrysler imports Mitsubishi cars that U.S. consumers can buy at no price penalty compared to similar Toyotas & Datsuns. If Chrysler wanted Japanese steel or fasteners, for instance, they could not import these items because they don't manufacture them. Chrysler, instead, would have to go to U.S. manufacturers of these products who could import these items.

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NINETY ONE ORGANIZATIONS JOIN IN RECOMMENDING U.S. TRADE PRINCIPLES

WASHINGTON -- (Ninety-one) national organizations, representing well over half of U.S. farmers, nearly 100 percent of U.S. exporters and importers, and through the major business trade associations a majority of the nation's businesses, have forwarded to U.S. trade officials and congressional leaders a set of principles which they are recommending to govern United States trade policy.

The informal broad-based group is urging the development of a comprehensive U.S. trade policy, including efforts to reduce the federal budget deficit and shift the value of the dollar. The group endorses eight trade principles which call for aggressive action "against unfair trade practices that harm American business and workers" and urges the strengthening of programs to increase exports.

"The principles were first developed in October 1985 when 25 business, consumer and farm groups endorsed them. The number of national organizations supporting the principles has now grown to over ninety with new groups approving them every day," said William Kay Daines, Chairman of the World Trade Forum. The World Trade Forum is an informal broad group of companies, trade associations, farm groups, civic and consumer groups which share an interest in and commitment to the principle of open and expanding world trade.

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PRINCIPLES TO GOVERN U.S. TRADE POLICY

1. The United States should move swiftly and aggressively under existing authority against unfair trade practices that harm American business and workers.

2. The Federal Government should move quickly and comprehensively to address important factors contributing to the U.S. trade deficit, including the federal budget deficit and the highly valued dollar.

3. U.S. trade policy should be developed in a comprehensive manner, recognizing that exports create jobs, and should avoid actions that benefit one sector to the detriment of others and the national interest.

4. Any new trade legislation should be consistent with U.S. international obligations and should have the effect of strengthening the President's ability to expand U.S. exports rather than creating new U.S. import restrictions.

5. U.S. international policy must recognize the critical need to enhance our exports and to minimize export disincentives.

6. The Federal Government should promote the retraining of workers adversely affected by shifts in world trade through cost effective efforts involving both the public and private sectors.

7. U.S. trade policy should not undermine the economies of our trading partners in developing countries, which will only shrink long-term U.S. export markets and threaten the international financial system.

8. The U.S. should actively promote comprehensive multilateral negotiations to expand trade in goods and services and should work toward the strengthening of the international economic system.

THE WORLD TRADE FORUM IS AN INFORMAL GROUP OF ORGANIZATIONS WHICH SHARE AN INTEREST IN EXPANDING WORLD TRADE
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The Following is a list of the Organizations Endorsing the "Principles to Govern U.S. Trade Policy", as of March 7, 1986.

1. American Association of Exporters and Importers
2. American Association of Nurseryman, Inc.
3. American Association of Port Authorities
4. American Electronics Association
5. American Fair Trade Council
6. American International Automobile Dealers Association
7. American Retail Federation
8. American Soybean Association
9. Arizona Forage and Grain Growers, Inc.
10. Arkansas Association of Wheat Growers
11. Arkansas Retail Merchants Association
12. Association of General Merchandise Chains
13. Automobile Importers of America
14. California Association of Wheat Growers
15. Citizens For A Sound Economy
16. Colorado Association of Wheat Growers
17. Computer and Business Equipment Manufacturers Association
18. Connecticut Retail Merchants Association
19. Consumers For World Trade
20. Direct Selling Association
21. Emergency Committee on American Trade
22. Fertilizer Institute
23. Florida Retail Federation
24. Footwear Retailers of American
25. Georgia Retail Association
26. Idaho Retailers Association, Inc.
27. Idaho State Wheat Growers Association
28. Illinois Retail Merchants Association
29. Indiana Retail Council, Inc.
30. International Apple Institute
31. Jewelers of America
32. Kansas Association of Wheat Growers
33. Kansas Retail Council
34. Louisiana Retailers Association
35. Maryland Retail Merchants, Inc.
36. Michigan Merchants Council and Associates, Inc.
37. Millers' National Federation
38. Minnesota Association of Wheat Growers
39. Minnesota Retail Merchants Association
40. Missouri Retailers Association
41. Montana Grain Growers Association
42. Montana Retail Association
43. National Association of Retail Druggists
44. National Association of Stevedores
45. National Association of Wheat Growers
46. National Constructors Association
47. National Cooperative Business Association
48. National Corn Growers Association
49. National Federation of Export Associations
50. National Foreign Trade Council

51. National Grain Trade Council
52. National Grange
53. National Mass Retailing Institute
54. National Retail Hardware Association
55. National Soybean Processors Association
56. National Spa and Pool Institute
57. National Sporting Goods Association
58. National Turkey Federation
59. South Dakota Wheat Producers Association
60. Nebraska Wheat Growers Association
61. Nevada Retail Association
62. New Jersey Retail Merchants Association
63. New Mexico Wheat Growers Association
64. North Dakota Wheat Producers, Inc.
65. Ohio Council of Retail Merchants
66. Oklahoma Retail Merchants Association
67. Oklahoma Wheat Growers Association
68. Oregon Retail Council
69. Oregon Wheat Growers League
70. Pennsylvania Retailers Association
71. Retail Council of New York State
72. Retail Industry Trade Action Coalition
73. Retail Merchants Association of Nebraska
74. Rhode Island Retail Federation
75 Rice Millers' Association
76. Scientific Apparatus Makers Association
77. South Dakota Retailers Association
78. South Dakota Wheat Producers, Inc.
79. Tennessee Retail Federation
80. Texas Retailers Association
81. Texas Wheat Producers Association
82. U.S.A. Poultry and Egg Export Council
83. U.S. Cane Sugar Refiners' Association
84. U.S. Chamber of Commerce
85. U.S. Durum Growers Association
86. U.S. Feed Grain Council
87. Vermont Retail Association
88. Virginia Retail Merchants Association
89. Washington Association of Wheat Growers
90. West Virginia Retailers Association, Inc.
91. Wyoming Wheat Growers Association